

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION AT SANTA ANA  
HONORABLE JOSEPHINE L. STATON, JUDGE PRESIDING  
**CERTIFIED TRANSCRIPT**

PRESLIE HARDWICK,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	SACV NO. 13-1390-JLS (ANx)
	)	
COUNTY OF ORANGE, MARCIA VREEKEN,	)	
ELAINE WILKINS, THE ESTATE OF	)	
HELEN DWOJAK, SHARON GRIER; and	)	
DOES 1-100,	)	
	)	
DEFENDANTS.	)	
_____	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

SANTA ANA, CALIFORNIA

TUESDAY, MAY 23, 2017

8:29 A.M.

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I N D E X

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DEANNA FOGARTY	186			

1 SANTA ANA, CALIFORNIA; TUESDAY, MAY 23, 2017; 8:29 A.M.

2 -oOo-

3 *(The following proceedings were had outside the*  
4 *presence of the jury:)*

5 THE COURT: Good morning.

6 All right. My understanding is that we may have  
7 some issues to address before we bring the jury up. What  
8 are those?

9 MR. POWELL: The first is, there was an order  
08:29:56 10 yesterday about making witness binders.

11 THE COURT: Stand, please.

12 MR. POWELL: Oh, may I -- well, may I ask that  
13 until I have to stand later in the presence of the jury that  
14 I not, because my back is really, really bad. As of last  
08:30:09 15 Friday, I was literally going to possibly be asking for a  
16 continuance. I've doped up on Advil, doing what I can, but  
17 it's really, really bad, Your Honor.

18 THE COURT: All right.

19 MR. POWELL: Thank you.

08:30:21 20 THE COURT: So, go ahead.

21 MR. POWELL: Okay. The Court made the order about  
22 exhibit binders per witness, which makes sense, especially  
23 given what we've seen, but that brought out to light the  
24 issue of, like, a lot of civil trial transcripts from before  
08:30:35 25 that will be used, will be read, will be used to refresh

08:30:40 1 recollection.

2 What I've done in an abundance of caution for at  
3 least the first witness, I've printed her entire prior civil  
4 trial testimony that I plan to use, so it's -- at the ready  
08:30:49 5 I've --

6 *(Court Reporter requests clarification for the*  
7 *record.)*

8 THE COURT: Slow down just a --

9 *(Court Reporter requests clarification for the*  
08:31:00 10 *record.)*

11 THE COURT: At the ready.

12 MR. POWELL: So it's at the ready. And I guess  
13 that's it. That's one of the issues.

14 THE COURT: All right. So in terms of deposition  
08:31:09 15 transcripts that you may be using throughout the course of  
16 the trial for either impeachment purposes or reading from  
17 the testimony as the witnesses' prior testimony, that should  
18 be available to the witness. To the extent you're going to  
19 ask the witness to look at anything, it needs to be up there  
08:31:29 20 whether it's within the binder or you've provided everyone  
21 with a separate transcript in advance. If it's -- it needs  
22 to be up there. Because what we don't want is time spent  
23 where in the middle of your examination, you know, then it's  
24 may I approach, may I hand the witness this, may I give the  
08:31:47 25 Court that. It's going to take up too much time. So you

08:31:52 1 just need to have it, whether that is in the binder or  
2 otherwise, available at the witness stand and here on the  
3 bench and with opposing counsel. You just need to have that  
4 done in advance of each witness.

08:32:05 5 MR. POWELL: Okay. So then, possibly, as a  
6 solution to that when one of us coming in and we know who's  
7 coming, we go and get those that -- that are, you know,  
8 coincide with the person and what we might pull out.

9 "Those" meaning, let the record reflect the 28 volumes of  
08:32:23 10 exhibits, and -- that has civil trial transcripts in it.  
11 The deposition binders, I don't know where those ended up,  
12 but I know they were dropped off the other day.

13 And if those can be set there, that's what you  
14 mean, right?

08:32:34 15 THE COURT: Well, except that means -- as long as  
16 you have it separated out so that it's easy for each  
17 witness, otherwise it's going to take too long and then  
18 you're just going to have it in the binder itself. I was  
19 really talking about deposition transcripts. To the extent  
08:32:50 20 you have to pull out from these 28 binders some trial  
21 transcripts then, no, you're going to need to figure out  
22 what you need to have and put it in the binder -- witness  
23 binder.

24 MR. POWELL: So that is --

08:33:02 25 THE COURT: I was thinking of deposition

08:33:04 1 transcripts or actual transcripts that you have that are  
2 separate from the 28 binders. Those, obviously, you can  
3 have. You can just have on the stand. But if we're talking  
4 about things that are buried as exhibits in those 28 binders  
08:33:20 5 then, no, you do need to have that separated out and put in  
6 the witness binder.

7 MR. POWELL: Can we use for an exhibit the  
8 binders, the 28 binders, and just tag them with, like, a  
9 Post-it note for that witness that we're going to use that  
08:33:31 10 day? You know, we just come in, spend a minute, find the  
11 ones, tag them and set them on, whatever, where they sit?

12 THE COURT: We can see how that works, as long as  
13 it's tagged in advance and it's sitting on the -- on the  
14 witness stand and not something that they have to turn  
08:33:51 15 around, you know, Ms. Smith and look at --

16 MR. POWELL: Lift the eight pound --

17 THE COURT: Exactly. We're not -- and search for  
18 the right binder. No, we're not going to do that. If  
19 you've got it clearly tabbed and sitting on the witness  
08:34:04 20 stand, that's fine. My goal is not to create red tape. My  
21 goal is -- in a bureaucracy, my goal is simply to make sure  
22 that we are proceeding efficiently and that we're not  
23 wasting any time. So we'll see how that works. And I'm  
24 fine to start with that. Okay.

08:34:21 25 MR. POWELL: And then the other -- another is,

08:34:23 1 there was request on a ruling yesterday -- because we're  
2 working out of a condo. We filed a request to waive the  
3 lodging of the double-marked-up depositions and  
4 double-marked-up civil trial transcript portions, because of  
08:34:36 5 an printing error. It was filed yesterday afternoon.

6 THE COURT: I saw that. I mean, it's one of those  
7 things where I'm not going to issue an order saying, Yes,  
8 *that's fine*, simply because it looks like it was -- these  
9 are my trial orders that have been out for a long time,  
08:34:54 10 lodging and things like that. The fact that it's late at  
11 night the night before and you have a printer error, it just  
12 means that you did it at the last minute. That's not a  
13 reason for me to issue an order saying everything is fine.  
14 If you have an error and you didn't get something done,  
08:35:10 15 it's -- it's -- I'm not sure what you want me to do. What  
16 are you -- what are you looking for from the Court?

17 MR. POWELL: Well, counsel and I agree that  
18 neither of us need these particular ones that we're talking  
19 about today. They'll be available today.

08:35:24 20 THE COURT: Okay.

21 MR. POWELL: But, please, understand, Your Honor,  
22 since we are working remotely from a condo, of course, we  
23 brought a printer and all that, but we do have technical  
24 problems. Everything we need to do, we have to do it from a  
08:35:35 25 printer and it made no logic -- since I would be here ahead



08:35:37 1 of time -- to put all that and load it all up in San Jose  
2 and drive it here. So that's how we've been operating.  
3 We'll catch up. We'll catch up when we get through the  
4 first three days. We'll catch up, but that's what's  
08:35:50 5 happening.

6 THE COURT: All right.

7 MR. POWELL: Next issue.

8 THE COURT: Whatever you have next.

9 MR. POWELL: Go ahead, Norm, if you want.

08:36:00 10 MR. WATKINS: Thank you, Your Honor.

11 I gave counsel a heads-up. I just -- I mean,  
12 there's no *in limine* ruling on this, but I want to be  
13 perfectly upfront, because it may be sensitive.

14 Kendall Hardwick has given a deposition, and in  
08:36:15 15 the deposition she testified that -- in fact, she was  
16 testifying under order of court that the lawsuit that she  
17 had, which is identical to this one, she dismissed because  
18 it was all false and she was under extreme pressure by her  
19 mother and the lawyer to continue with it. And I think that  
08:36:37 20 that's relevant and I intend -- I intend to use that. I  
21 gave Counsel a heads-up I intended to do so.

22 THE COURT: All right. And -- and you're just  
23 letting the Court know and then if there's an objection to  
24 it, you'll raise that.

08:36:57 25 When do you intend to use that? In your

08:37:00 1 case-in-chief?

2 MR. WATKINS: Probably in opening.

3 THE COURT: You're going to reference it in  
4 opening?

08:37:05 5 MR. WATKINS: Yes.

6 THE COURT: All right. Any response?

7 MR. POWELL: That's fine, Your Honor. But is that  
8 all you had on that, Norm, because this is related?

9 The other issue we have, Your Honor, as between  
08:37:15 10 us, these -- the next two revolve around Kendall Hardwick.

11 She's unavailable to us -- our office. We have no idea  
12 where she's living. We tried through our client, her  
13 sister, who they have no contact, but they have like a  
14 triangulated contact through the father to obtain an address  
08:37:34 15 to serve her. He wouldn't give it to us, so we've told them  
16 for a long time, she's available to us. They, apparently --  
17 I don't know how. Maybe through Mr. Hardwick -- were able  
18 to serve her as I understand it, and they say, she's coming.  
19 I'm not waiting for Kendall to come. She's unavailable to  
08:37:53 20 me.

21 THE COURT: No, I'm sorry. If all you're saying  
22 is that you tried to get an address through her father,  
23 that's not sufficient to constitute unavailability. I mean,  
24 you have to show that you did what normal investigation is  
08:38:06 25 to try to locate her address and serve her. Asking her dad

08:38:11 1 to let you know is not sufficient to constitute  
2 unavailability is she's otherwise present. That just  
3 rewards insufficient service.

4 MR. POWELL: There's more.

08:38:22 5 THE COURT: Okay. Well, that was all you gave me.

6 MR. POWELL: She's in Nevada. That much we  
7 learned, so she's out of my subpoena jurisdiction anyway.  
8 She's more than 150 miles. According to the dad, she's in  
9 Las Vegas. She's outside of my jurisdiction. So she's at  
08:38:37 10 this time in history, a friendly witness to the defendants;  
11 very hostile witness to me. And I think father is just  
12 being protective, but I think that makes her unavailable as  
13 well. And I intended -- I intended -- I intend to actually  
14 make her, like, my second witness from deposition readings,  
08:38:54 15 because she didn't give just one deposition in this case.  
16 She's given two depositions. Not in this case but two  
17 depositions.

18 THE COURT: All right. Anything?

19 MR. WATKINS: Your Honor, we located Kendall  
08:39:09 20 Hardwick online and served her with a subpoena. And as we  
21 understand it, it's her -- she can probably ignore that  
22 subpoena. We've given her all the expenses, the travel  
23 expenses and everything else. We've had no communication  
24 with her, but we have been advised by her father that it is  
08:39:33 25 her intention to honor that subpoena. And --

08:39:38 1 THE COURT: Well, if she wants to honor it and get  
2 here in time for the plaintiff's case in chief, that's fine.  
3 But if she's -- is she in Nevada?

4 MR. WATKINS: She is.

08:39:53 5 THE COURT: And as you said --

6 MR. WATKINS: I believe she is.

7 THE COURT: And as you said, she can probably  
8 ignore the subpoena. Unless she's here and available -- and  
9 truly available, then he can use the transcript. Now you of  
08:40:08 10 course -- if she shows up, you can have her testify. If she  
11 shows up early -- she's available early, then she can  
12 testify in his case-in-chief, but I don't think the  
13 plaintiff is required to wait to decide what she wants to do  
14 only to find out at the end that she's decided maybe not to  
08:40:28 15 show up, unless you have some other solution other than  
16 crossing your fingers.

17 MR. WATKINS: We'll have to cross our fingers.  
18 Excuse me.

19 Well, the solution I would offer, we both  
08:40:41 20 designated pretty much the same material from her  
21 deposition. At least, that's the last version I've seen of  
22 the designations. I believe that we may have information on  
23 that by this afternoon. She may be here today. I've  
24 encouraged that. And if that happens, then we've got no  
08:41:06 25 problem because she's not the first witness, as I understand

08:41:09 1 it. But I understand the Court's thinking on it, and I'll  
2 see what I can do. If --

3 THE COURT: If she's here by today, that's fine.  
4 That will solve the problem. If she's not, then at the time  
08:41:30 5 that her testimony is needed as part of the case-in-chief,  
6 you can address it via prior testimony.

7 MR. WATKINS: If I may. If I knew when plaintiff  
8 wanted to put her up, that would be a help.

9 THE COURT: All right. I believe you had said  
08:41:49 10 might be my second witness, so you have to -- do you have --  
11 you have another witness first, presumably, right?

12 MR. POWELL: Yeah, Fogarty-Hardwick. I don't know  
13 if I mentioned it to you, but she's got a long estimate.  
14 It's like 8.56 hours, or something like that. Six hours by  
08:42:08 15 defendants alone.

16 THE COURT: What I do, as I indicated before, is I  
17 give you license to put on a witness. If you think they  
18 need to be on for a long time, I tend not to interrupt you  
19 and say, *Why in the world do we need this witness on this*  
08:42:27 20 *long?* But when you get to the end of your time, you're at  
21 the end of the time. And if the witness has just been  
22 rambling, or repetitive, or off on some tangent, then that's  
23 it. You've just eaten up your time. It's as easy as that.  
24 I've given you an eight-day time limit. You get four days  
08:42:48 25 each. I've told you how many hours that is.

08:42:51 1 MR. POWELL: So I think what you started with was,  
2 when do I -- I would put her on after. And especially using  
3 transcripts of depositions, it would be very easy to then  
4 transition to doing that. So that is my intent. And I've  
08:43:02 5 told them that a long time now.

6 THE COURT: All right. Well, it sounds like if  
7 she's here by the end of the day today, or depending upon  
8 how long this first witness takes or the beginning of the  
9 day tomorrow, because we still have to select the jury. You  
08:43:20 10 have the opening statements. I do some pre-instruction, but  
11 we should be definitely well into the testimony today, so --  
12 of the first witness.

13 MR. WATKINS: Thank you, Your Honor.

14 MR. POWELL: The last issue, Your Honor:

08:43:34 15 It also has to do with Kendall Hardwick. That's  
16 the use of videos. I met and conferred with counsel. We  
17 both agree there's been -- there's objections at points in  
18 the depositions that would, of course, relate to the videos  
19 and there's been no ruling on the objections. And as you  
08:43:53 20 can imagine, it would be a clunky process to move along once  
21 I'd say "objection" as an area approaches, so it's a problem  
22 as for the 2014 video depo and the --

23 THE COURT: And we have those deposition  
24 transcripts lodged now?

08:44:12 25 MR. POWELL: Yeah. Yes. And part of the thing

08:44:14 1 that's coming today, yes, is the double-marked-up -- is the  
2 double-marked-up.

3 But, yes, the depositions are lodged.

4 THE COURT: When were those lodged?

08:44:23 5 MR. POWELL: Counsel lodged them yesterday.

6 THE COURT: All right. So that's when I first got  
7 the deposition transcripts, right?

8 Okay. And you're asking whether I have a ruling  
9 on objections?

08:44:33 10 MR. POWELL: No. I'm pointing on that there is an  
11 issue with the double-marked-up. When you asked about did  
12 she lodge the depositions, those are nice clean -- there's  
13 nothing on them. We, of course, went through the Court's  
14 standing order and did the process of a deposition where  
08:44:45 15 we -- especially, unavailables -- where we marked it up.  
16 And so, Kendall Hardwick is one of those people, because I  
17 considered her unavailable and still do.

18 And so that coincides, obviously, with her video  
19 depo. But as you can -- as you well, I'm sure, understand  
08:45:00 20 that the video depo issue is a little bit harder when it  
21 comes to getting objections. If we had a little mini-ruling  
22 on the objections ahead of time or something, maybe the  
23 videos could be played later, but I want to make clear, as  
24 far as I'm concerned, both videos, if played in their  
08:45:17 25 entirety, are fine with me. Both videos, if played in their

entirety, are fine with me, if he wishes to do that.

THE COURT: Well, we typically don't have objections played in front of the jury, if the Court -- whether I'm sustaining or overruling because then, if I sustain the objection, it doesn't make any sense.

So are there objections included in those transcripts?

MR. WATKINS: There are, Your Honor, by both sides.

THE COURT: All right. I'll take a look at those and then you can cut your videos accordingly.

MR. WATKINS: I may be corrected on that.

THE COURT: We don't have any witnesses in the courtroom, do we, now? Just making sure. All right.

MR. POWELL: We agreed on that request. It was another order, but we agree on that.

MR. WATKINS: To exclude witnesses.

MR. INGOLS: Your Honor, what I have lodged in terms of deposition transcripts are the originals. They do not have markings in them. The markings are being prepared by Mr. Powell's office, and I think that's what he was alluding to before when he was talking about the printing mishap.

THE COURT: Do I have what you need me to rule on with regard to objections?



08:46:37 1 MR. INGOLS: You do not.

2 THE COURT: Okay. Then I can't rule and you can't  
3 play anything until I've ruled on those.

4 MR. POWELL: We'll get them for sure at the lunch  
08:46:45 5 hour. We'll have them for you by 1:00 -- 1:30.

6 Another thing that counsel -- is that okay?

7 THE COURT: It is. And when I get my -- when I  
8 have the opportunity to get off the bench and I'm not  
9 presiding over a trial or handling other matters, I will  
08:46:58 10 rule on your objections. And then after that, you can use  
11 them.

12 MR. POWELL: Okay. And then, the final thing -- I  
13 informed counsel of this on Saturday morning. My client is  
14 limiting her claims to the damages flowing from the acts of  
08:47:13 15 judicial deception and, of course, the resulting seizure as  
16 to the 17th and the judicial deception claim as to the 31st,  
17 but -- of March -- I'm sorry -- but all -- waiving any claim  
18 of damages thereafter. It's just the damages flowing from  
19 those events. It should, I would think, limit the scope of  
08:47:35 20 the trial, but we'll see. There's different approaches.

21 THE COURT: All right.

22 MR. POWELL: And they've been advised.

23 MR. WATKINS: I first heard about this a day ago,  
24 I think. Obviously, he can order his proof as he sees fit.  
08:47:52 25 I don't have any problem with that. I don't know that it

08:47:56 1 changes much, but --

2 THE COURT: All right. Well, any relevance  
3 objections can be made during trial then.

4 All right. We're going to be bringing the jury up  
08:48:07 5 in just a few minutes. Once we have a jury, I am very  
6 mindful of their time. And so, if in the future, like  
7 today, you have any issues that need to be addressed, we'll  
8 address them in the morning beforehand. We can stay late  
9 and address them afterwards. And we can take a portion, you  
08:48:29 10 know, of the break at lunch to address issues. I tend not  
11 to use breaks in the morning or the afternoon for that  
12 purpose, because the main purpose of that break is to let my  
13 court reporter rest her fingers for a few minutes and her  
14 brain and if we're out here, she can't do that. That's why  
08:48:51 15 you should always be, of course, thinking ahead. And if you  
16 have an issue that you anticipate, those are the times we'll  
17 deal with it. I am not very lenient on sidebars. So if you  
18 ask for a sidebar during testimony, I'm likely, unless it's  
19 something that I can see absolutely key, to say no.

08:49:13 20 MR. POWELL: Would you like that if, you know, at  
21 the end of the day we talk and we see an issue coming and do  
22 our meeting and conferring that we send an e-mail later that  
23 night that would be in your in-box in the morning, or would  
24 you not want that?

08:49:25 25 THE COURT: To the chambers e-mail, saying that

08:49:29 1 you would like to have me on the bench by 8:30, yes.

2 MR. POWELL: More of giving you a heads-up, like  
3 here's an issue --

4 THE COURT: Yes.

08:49:33 5 MR. POWELL: Here's what plaintiff says. Here's  
6 what defendant says, so you have a minute --

7 THE COURT: Absolutely.

8 MR. POWELL: Okay.

9 THE COURT: Any heads-up that you can give me  
08:49:40 10 during the trial makes for better rulings and a more  
11 efficient process. So, absolutely.

12 I'm going to step off the bench. In a few minutes  
13 we'll have our --

14 (Pause.)

08:49:53 15 THE COURT: So that we can actually get started by  
16 9:00. That's perfect. I think we have how many?

17 THE CLERK: I believe we have 38.

18 THE COURT: We have 38 prospective jurors. We  
19 will select eight, as I've told you before. Keep in mind  
08:50:07 20 you're doing a mini-opening statement for them, which will  
21 be no more than five minutes. And we're using the Arizona  
22 Blind Strike Method, so you will get the listing of all the  
23 jurors in the order in which they will be eventually seated.

24 All right.

08:50:26 25 THE CLERK: All rise.

08:54:00 1           *(Recess taken from 8:54 a.m. to 9:06 a.m.)*

2           THE CLERK:   Calling Case SACV 13-1390-JLS, Preslie  
3   Hardwick versus County of Orange, et al.

4           Counsel, please state your appearances for the  
09:06:27 5   record.

6           MR. POWELL:   Good morning, Your Honor and members  
7   of the jury.

8           My name is Robert Powell.   I am here with my  
9   associate and co-counsel, Dennis Ingols, and my client is  
09:06:38 10   Preslie Hardwick, plaintiff.

11          THE COURT:   Good morning.

12          MR. WATKINS:   Good morning, Your Honor.

13          Norm Watkins for defendants and my partner here,  
14   Pancy Lin.

09:06:48 15          Joined with me are I-tech gurus, Roger and  
16   Ms. Murphy to help us with jury selection.

17          My clients here:   Elaine Wilkins -- if you could  
18   rise -- and Marcie Vreeken right next to her.

19          Thank you, Your Honor.

09:07:10 20          THE COURT:   Good morning.

21          All right.   Ladies and gentlemen, welcome to  
22   Courtroom 10A, United States District Court for the Central  
23   District of California.   I always begin with a show of  
24   hands.   I want to know how many of you, when you received  
09:07:25 25   that summons in the mail, you felt like you won the lottery.

09:07:31 1 (Laughter.)

2 THE COURT: Oh, I have hands. I've never had  
3 those hands before. This may be the first time in my  
4 15-year history as a judge where someone has raised their  
09:07:42 5 hand.

6 No, I do understand that you are not here because  
7 you have nothing else going on in your life. I understand  
8 you're here because of an obligation that you felt when you  
9 received that summons. But I am going to make a relatively  
09:08:01 10 bold proclamation and say, *Well, you may have something else*  
11 *to do. You don't have anything better to do.*

12 And the reason that I say that -- well, I will not  
13 digress. When we get into trial and we're moving along,  
14 we're going to be very efficient, but I'm going to digress  
09:08:19 15 now. I'm going to tell you a story, and it's a little bit  
16 of an explanation as to why we have the Sixth and Seventh  
17 Amendments right to a jury trial in both criminal cases and  
18 in civil cases. The right to a jury trial was so important  
19 that it had to be enshrined in our Constitution. And I'm  
09:08:40 20 going to all the way back to the year 1670, in England, to  
21 give you a little bit of background as to why.

22 In the summer of 1670, William Penn, who was a  
23 Quaker, was preaching nonconformist religious views out on  
24 the streets of London. And he was gathered up and put on  
09:09:01 25 trial at the Old Bailey, London's old central courthouse,

09:09:06 1 criminal court. He demanded to know what he was charged  
2 with and he was told he was charged with just violating the  
3 common law.

4 During the trial whenever he tried to ask  
09:09:16 5 questions or make objections, he was removed from the  
6 presence of the jury and confined in a corner, an enclosed  
7 corner of the room where he couldn't see or hear anything  
8 that was going on and couldn't ask any questions.

9 So at the conclusion of the trial, the jury came  
09:09:31 10 back with a verdict of not guilty. Well, the judge was  
11 outraged and he commanded that the jury retire again and  
12 return a verdict of guilty. And once again, they came back  
13 and they came back with a verdict of not guilty.

14 At some point after this happened more than once,  
09:09:52 15 he ordered the jury to be confined to the hole in  
16 Newgate Prison and held there without food or water until  
17 they could return a proper verdict. Three times they went  
18 out and came back and each time with a verdict of not  
19 guilty. I think, he eventually find them and, perhaps, let  
09:10:12 20 them go. No, he ordered -- I see my own notes. He ordered  
21 them imprisoned until the fines were paid.

22 Of course, why do I tell you this story? It is  
23 not because if you don't return a proper verdict I'm going  
24 to confine you to a hole. No, that won't happen. I don't  
09:10:30 25 determine what the proper verdict is. It is to tell you why

09:10:33 1 we find in this country the principle of jury independence  
2 so important. There is no one else in this room who can do  
3 what you will do as jurors, which is be the judges of the  
4 facts in this case. I can't do that. My staff can't do  
09:10:54 5 that. Certainly, the parties can't. We rely on members of  
6 the public, our citizens, to come in -- peers -- and decide  
7 the facts of a case. And it's in that manner that you will  
8 then return a verdict. And that's the only thing -- that is  
9 something that only you can do. And so, without you -- I  
09:11:18 10 know it sounds like a cliché now, but if you're selected on  
11 a jury, I'll remind you of this at the end of the trial and  
12 I usually get nods of agreement. Without you, the wheels of  
13 justice would grind to a halt. We couldn't do what we do  
14 here.

09:11:33 15 And so with that, I want to thank you for being  
16 ready, willing and able to serve as a juror, and I'm going  
17 to ask my courtroom deputy clerk to please swear in the  
18 prospective jurors.

19 THE CLERK: Ladies and gentlemen, please stand and  
09:11:50 20 raise your right hand to be sworn.

21 *(Prospective jury sworn.)*

22 THE PROSPECTIVE JURORS: I do.

23 THE CLERK: Thank you.

24 You may be seated.

09:12:08 25 THE COURT: All right. Now, the next thing that

09:12:10 1 we are going to do is going to make you feel like we're  
2 playing a game of musical chairs, but I promise you we're  
3 not. We have a purpose to this. We are going to seat you  
4 in a particular order. The way that we select a jury in  
09:12:24 5 this courtroom may be somewhat different than what you're  
6 used to, if you've been a prospective juror in other  
7 courtrooms before, so we ask that you bear with us. When  
8 your name is called -- do I have a -- do I have an extern  
9 who's here?

09:12:43 10 THE CLERK: Yes, Your Honor.

11 THE COURT: Oh, there you are. All right. We  
12 have externs who are from prestigious law schools. We have  
13 our extern from UCI here in -- here in Orange County. And I  
14 believe I have another extern in the back who is from  
09:13:00 15 U.C.L.A. They go to prestigious law schools. They learn  
16 important things. They learn all about our legal system.  
17 And, yet, I have them here in the role of -- we call it the  
18 "Vanna White" role, although we know all she did was turn  
19 numbers [sic]. They are directing, though. They are  
09:13:19 20 traffic cops, and they're going to direct. So, please,  
21 follow -- follow her lead when she directs you where to sit  
22 and feel free to come out from the -- because you're going  
23 to have to go up there, and this is her first time. The  
24 summer has just begun, so be kind.

09:13:39 25 You're going to have to go up there. And then as



09:13:41 1 people come through, you'll direct them where to sit.

2 She'll direct you into the box at first. And then you'll be  
3 in the seats over here in the back. And, again, just please  
4 follow directions when your name is called.

09:13:55 5 THE CLERK: Juror No. 1, Judith Creel, C-r-e-e-l.

6 THE COURT: We're going to start with the back  
7 seat up here in the rear corner, and --

8 THE CLERK: Juror No. 2, Jourdana Gergis,  
9 G-e-r-g-i-s.

09:14:23 10 Juror No. 3, Sue McCann, M-c C-a-n-n.

11 Juror No. 4, Jeffrey Abbott, A-b-b-o-t-t.

12 Juror No. 5, Jesse Tapia, T-a-p-i-a.

13 Juror No. 6, Martin Zola, Z-o-l-a.

14 Juror No. 7, Phuong-Chi Nguyen, N-g-u-y-e-n.

09:15:08 15 Juror No. 8, William Leon, L-e-o-n.

16 Juror No. 9, Arte Figueroa, F-i-g-u-e-r-o-a.

17 THE COURT: Take all your things with you.

18 THE CLERK: Juror No. 10, Patrick Courchaine,  
19 C-o-u-r-c-h-a-i-n-e.

09:15:48 20 Juror No. 11, Edward Hanke, H-a-n-k-e.

21 Juror No. 12, Abigail Maquitico,  
22 M-a-q-u-i-t-i-c-o.

23 Juror No. 13, Thomas Lee, L-e-e.

24 Juror No. 14, Trina Palter, P-a-l-t-e-r.

09:16:31 25 Juror No. 15, Domine Solesbee, S-o-l-e-s-b-e-e.

Juror No. 16, Baha Dean, D-e-a-n.

Juror No. 17, Susan Spiezia, S-p-i-e-z-i-a.

Juror No. 18, Robert Huang, H-u-a-n-g.

Juror No. 19, Sebastian Zapart, Z-a-p-a-r-t.

Juror No. 20, Gerardo Rivera, R-i-v-e-r-a.

Juror No. 21, Elizabeth Corona, C-o-r-o-n-a.

Juror No. 22, Richard Lagorio, L-a-g-o-r-i-o.

Juror No. 23, Kylie Filipek, F-i-l-i-p-e-k.

Juror No. 24, Jasmine Hugo, H-u-g-o.

Juror No. 25, Chi Nguyen, N-g-u-y-e-n.

Juror No. 26, Mariana Tudor, T-u-d-o-r.

Juror No. 27, Viviana Kim, K-i-m.

Juror No. 28, Elizabeth Van Hoogmoed,

V-a-n H-o-o-g-m-o-e-d.

Juror No. 29, Tzee Lin, L-i-n.

Juror No. 30, Carlos Ortigoza, O-r-t-i-g-o-z-a.

Juror No. 31, Elizabeth Halcomb, H-a-l-c-o-m-b.

Juror No. 32, Gino Estacio, E-s-t-a-c-i-o.

Juror No. 33, Elizabeth Kim, K-i-m.

Juror No. 34, Julia Silvey, S-i-l-v-e-y.

Juror No. 35, Jeffrey Cook, C-o-o-k.

Juror No. 36, Kathryn Yarnal, Y-a-r-n-a-l.

Juror No. 37, Terry Braley, B-r-a-l-e-y.

Juror No. 38, Amada Almase, A-l-m-a-s-e.

THE COURT: All right. Now, I told you it would

09:20:30 1 feel a little bit like musical chairs, but you're now all  
2 seated where you need to be, and we have you in order.

3 So let me give you some information about the case  
4 a little bit and about our schedule: So this is a civil  
09:20:52 5 case titled Preslie Hardwick versus County of Orange, et al.  
6 And the case is expected to last, approximately, eight days.  
7 For a federal trial, I know sometimes you've heard of  
8 10-week trials, six-month trials, et cetera. You don't  
9 have one of those, so that's the good news. The eight days  
09:21:20 10 doesn't include deliberations because we can't estimate how  
11 long you would take to deliberate on a case.

12 Our schedule is that we -- this week, obviously,  
13 you're starting on Tuesday, and we will go Tuesday,  
14 Wednesday and Thursday. On Fridays, I have other matters  
09:21:38 15 that I hear, so we are dark for purposes of trial on  
16 Fridays, so you won't be here on Friday. We would start  
17 again the following Monday, and we'll go Monday through  
18 Thursday again, unless you're deliberating on a Friday, we  
19 won't go on Friday. And since that's seven days, I imagine  
09:22:01 20 you would come back on the following Monday for the last day  
21 of trial, if it hasn't concluded yet and then you would  
22 deliberate thereafter. All right. So that's our schedule.

23 We begin at 9:00 each morning and we go until  
24 4:30 in the afternoon. We have a 15-minute break in the  
09:22:21 25 morning usually around 10:45 or so and a 15-minute break in

09:22:25 1 the afternoon, usually around 3:15, 3:00 or 3:15. And for  
2 lunch, we are in break from noon to 1:30. That way it's a  
3 little longer, but we can handle some other matters while  
4 you're not here so we're not wasting your time having you  
09:22:47 5 sit in a hallway, or something to that effect. It's  
6 important for us to be able to keep this schedule that  
7 everybody arrives on time so that we're all ready to go.  
8 I -- it seems like that would be a given that you would all  
9 need to be here because even if one person is late, then we  
09:23:06 10 can't begin, right?

11           However, I say this and I emphasize it, because I  
12 had a trial a couple of years ago in which we were waiting  
13 for one juror. We finally found him, called the cell phone  
14 number that we got and got an answer. And he said, *Oh, I'm*  
09:23:22 15 *just running late. Start without me and I'll be there in a*  
16 *little while.*

17           *(Laughter.)*

18           THE COURT: Obviously, we couldn't, right?

19           We had to have everybody here, hearing the same  
09:23:33 20 evidence. So as long as everyone is here, we can keep to  
21 your schedule.

22           Now, before I go any further, what I'm going to do  
23 is, I'm going to have the attorneys give what I call a  
24 mini-opening statement to the entire panel. And we're going  
09:23:50 25 to begin with the plaintiff; that is, the person who's --

09:23:53 1 the attorney for the person who is bringing the lawsuit; and  
2 then, we will turn to defense counsel.

3 And this is just, like, five minutes to give you  
4 an overview, a quick overview so you understand maybe where  
09:24:07 5 some of the later questions are leading.

6 All right. And so with that, if you would like to  
7 begin, Mr. Powell.

8 MR. POWELL: Good morning, ladies and gentlemen.

9 As the Judge said, it's three to five minutes, so  
09:24:27 10 it's a short story, although it's really quite long. I'm  
11 going to start with the end first, the most traumatic event.

12 My client, Preslie Hardwick, when  
13 six-and-a-half-years old, found herself under a table at her  
14 school clinging to the leg of the table, screaming and  
09:24:48 15 wailing as social workers, including Ms. Vreeken, a police  
16 officer -- there was a police officer there -- came to  
17 remove her, because the court had made an order that she and  
18 her sister were going to be removed from their mother.  
19 Ms. Vreeken was there, but she's the one who got the order,  
09:25:09 20 and here's how she got it.

21 That event I just described was February 17th, the  
22 very day the court made the order.

23 On February 15th, Ms. Vreeken supervised a  
24 visit -- I'll take that back. She came at the end of a  
09:25:21 25 visit between the father, which were being monitored with

09:25:24 1 the children at that time, essentially, due to a long  
2 history of drug addiction. There was also a sex addiction  
3 I'll touch on briefly in a moment. And they had gone to  
4 court. He was having visits monitored. Ms. Vreeken came at  
09:25:39 5 the end of a visit. And Preslie came running out of that  
6 room and ran to the room where her mother was. Tears  
7 running down her eyes, saying they were going to be taken  
8 away that night, that Ms. Vreeken had said that they were  
9 going to be going to a foster home.

09:25:58 10 Ms. Vreeken came to the door after Preslie arrived  
11 with Kendall, who was also similarly red-eyed, teary-eyed,  
12 and she acknowledged that she had made that statement. She  
13 acknowledged that she had made that statement. The  
14 children's mother literally had to vomit and jumped up and  
09:26:20 15 ran to the restroom.

16 Two days later in court, Ms. Vreeken and  
17 Ms. Wilkins put the story together that Ms. Wilkins heard  
18 mom say this to the child or children and that was what all  
19 the hubbub was about. It was an absolute cold-hearted lie  
09:26:38 20 and the judge made an order. He actually had a meeting  
21 before their mother got in the courtroom with the county  
22 counsel and the attorneys for the social workers and came  
23 out of that meeting saying, initially, *I think I'm going to*  
24 *remove these children.* That was the first horrendous act.

09:26:55 25 The second horrendous act: So now they're

09:26:56 1 removed. They're in Orangewood. It's not a campground.  
2 It's not a fun place when you've been removed from your  
3 children -- from your parents. No place is. Both Preslie  
4 and her sister were suffering in that facility. Of course,  
09:27:12 5 they were lit up when someone came to visit them. So any  
6 reports about visits and the kids being excited, that makes  
7 sense. But they were in touch with their therapist who they  
8 had since the beginnings of divorce proceedings that started  
9 because of the father's drug and alcohol -- and we're  
09:27:29 10 talking crystal methamphetamine -- and sex addiction.  
11 That's what started all of that.

12 So when the children were in Orangewood and not  
13 doing well and their therapist/psychologist knew that and  
14 had left messages for Marcy Vreeken -- now, on March 31st,  
09:27:47 15 they lie again. A letter is literally went [sic] and picked  
16 up from the psychologist and brought back to the courtroom,  
17 okay? They read it. They don't let Preslie Hardwick's  
18 mother read it, okay?

19 And then the judge expressly asked -- this letter  
09:28:05 20 from the psychologist says, *They're not going. They're not*  
21 *doing good.* Preslie is acting out. She's having anger and  
22 acting-out issues. Kendall, who's on the autism spectrum,  
23 diagnosed early on: Pervasive deficit. It's on the autism  
24 spectrum. They're not doing well. And when the judge gives  
09:28:21 25 them the opportunity -- Ms. Vreeken the opportunity to tell

09:28:25 1 him, you know, if the kids are doing bad, you know, you  
2 would let me know that, right?

3 Yes. Another boldface lie.

4 I'm just going to briefly say that the background  
09:28:38 5 of the marriage was typical between the parents in the  
6 beginning; happy, great. They gave birth to -- well, the  
7 mother gave birth to Kendall, the child who did have a  
8 complicated pregnancy [sic], at least in the essence of a  
9 post-birth surgery to remove a large mass from her  
09:28:54 10 intestines and then later diagnosed as autistic. That  
11 required the mother to spend significant amounts of time.

12 They also hired a nanny, Rosie Reales. You may or  
13 may not hear from her in the course of this, depending on  
14 what people say when they sit on that stand, up there. And  
09:29:10 15 then when the issues of the alcohol and the drug abuse and  
16 sex addiction came to light, the divorce had to happen,  
17 obviously. The mother did try to help at first as father  
18 went through rehab. But, eventually, they divorced, and the  
19 defense is going to say it was a nasty divorce. I guess it  
09:29:29 20 is nasty when a mother is trying to protect her children.

21 In any event, the crux of this case will be -- and  
22 I'll say it now and I will say it at the end -- is whether  
23 it's okay to lie to a judge to get orders that rip a child  
24 from the child's parents.

09:29:48 25 THE COURT: All right. Now, Mr. Watkins.



09:29:52 1 MR. WATKINS: Thank you, Your Honor.

2 Good morning, ladies and gentlemen. I'm going to  
3 sort of look that way, but I'm addressing my comments to  
4 everyone back here as well.

09:30:01 5 You've heard the introductions and seen my  
6 clients. We are here because of what you will learn is a  
7 what's called a "high-conflict divorce." This is a divorce  
8 that just will not end. This couple was married for one  
9 half a length of time that it took for the divorce case to  
09:30:27 10 be litigated. It just went on and on.

11 Now, there was removal. And what you're going to  
12 learn as the case unfolds is that in 1999 -- the marriage  
13 occurred in 1989. The divorce occurred in '95 and it was  
14 rocky all the way up through '99.

09:30:53 15 In 1999, Preslie Hardwick's mother leveled charges  
16 of sex abuse against Preslie Hardwick's father claiming that  
17 he had abused in the most horrendous way the eldest  
18 daughter, and that would be Kendall. Preslie was born in  
19 1993. Kendall was born in 1990, so we're talking young  
09:31:23 20 children at that point. In fact, Preslie, when she  
21 testifies, she's going to tell you she doesn't really  
22 remember anything. She doesn't remember any of the facts.  
23 She doesn't know who my clients are. She doesn't know who  
24 she's suing. She doesn't know anything about them, and she  
09:31:40 25 doesn't recall anything that occurred during the time that

09:31:43 1 the social workers had contact with the family.

2 In 1999, for strategic reasons in the divorce,  
3 sexual abuse claims were lodged against Mr. Hardwick. And  
4 they weren't just lodged. They were publicly announced as  
09:32:04 5 well. It turns out that that automatically moved that  
6 divorce case into what's called dependency court.  
7 Dependency court -- and you'll learn this -- is there for a  
8 reason, and that is to determine what's in the best interest  
9 of the children, given these allegations and are the  
09:32:25 10 allegations true.

11 And so the case is now being handled by a judge in  
12 the juvenile court. The juvenile court holds hearings and  
13 the social workers prepare reports for each one of those  
14 hearings. And his job, the judge's job -- and this is a  
09:32:44 15 man -- his job is to determine what's in the best interest  
16 of the children for the safety of the children. And in that  
17 connection, the judge has the authority by California law to  
18 appoint an expert as the court's expert to do an in-depth  
19 study of the family and determine what's going on. Usually,  
09:33:09 20 one of those reports is enough. In this case, there were  
21 four by three different experts over a period of two years.  
22 Each one came to the same conclusion: The sexual abuse  
23 allegations are false. They were heavily influenced, if not  
24 coached, by mother and that it was very harmful, very  
09:33:36 25 harmful for the children.

09:33:39 1 Now, you're going to hear from those experts and  
2 you will hear their reasoning. And you're going to hear  
3 from a Dr. Rogers. She's so well-esteemed in this field.  
4 And she's going to tell you that Kendall Hardwick is  
09:33:56 5 particularly vulnerable to manipulation. She's vulnerable  
6 to manipulation, because she has what's known as a -- well,  
7 I just call it very high functioning autism. Very slight.  
8 She's a beautiful girl. She's now grown up, away. She's  
9 pregnant. And I'm hopeful that she will come here and  
09:34:17 10 testify, but she has given us testimony in the form of sworn  
11 testimony in depositions. And she testified originally  
12 because she had a lawsuit, identical lawsuit to Preslie's.  
13 And she testified that her dad did horrible things. Now,  
14 all this testimony was given while she was living with mom,  
09:34:43 15 Deanna Fogarty-Hardwick.

16 Then I took her deposition in Preslie's case. And  
17 in that case, she testified that -- and it was under order  
18 of court -- that everything was a lie; that she was told to  
19 lie. She was fed lies by her mother. That her father never  
09:35:08 20 touched her improperly. That she felt horrible about it and  
21 that she was going to fire her attorney and dismiss her  
22 lawsuit and she was being pressured by her mother and her  
23 attorney to continue with her lawsuit. She didn't continue  
24 with her lawsuit. She dismissed it. And thankfully she's  
09:35:33 25 gotten out from under all of this. And as I said, she's

09:35:37 1 doing well, I believe. She will testify either by video or  
2 by live testimony. But she testified that on that fateful  
3 night in November of 1999, she was actually sleeping with  
4 her mother. Her mother was distraught because of a pivotal  
09:36:05 5 point in the divorce litigation. She was worried about the  
6 hearing that was coming up and the talk just kept going and  
7 the next thing you know, this little girl is accusing her  
8 father of the worst kind of abuse.

9 THE COURT: You've got one minute.

09:36:25 10 MR. INGOLS: Thank you, Your Honor.

11 The worse kind of abuse. And she will testify  
12 that she wrote a story back then. And you'll learn that an  
13 11-year-old or a 10-year-old girl unraveled all of this way  
14 back in 2000, 2001.

09:36:49 15 So I thank you for your time and look forward to  
16 putting this case on before you. But the removal orders  
17 that came, came because of this kind of acrimony. This is  
18 what happens when children are drawn into divorce and made  
19 tools of the divorce.

09:37:11 20 Thank you, Your Honor. Thank you, ladies and  
21 gentlemen.

22 THE COURT: All right. We are going to start with  
23 the obvious: Jury service is a right. Jury service is an  
24 obligation. There's one thing that it's not and that's  
09:37:31 25 optional. You don't get to tell me -- raise your hand and

09:37:34 1 tell me that you would rather not be here. The only reason  
2 that you can be excused is for an undue hardship.

3 And I think it's best if I start by telling you  
4 what undue hardship is not. It doesn't mean that it's  
09:37:52 5 inconvenient to either you or your employer for you to be  
6 here. I understand that many of you have important jobs,  
7 but we have surgeons who come here and sit as jurors. We  
8 have CEOs of companies who come and sit. We have lawyers  
9 who come and sit as jurors. And there is no one who can  
09:38:19 10 tell me, really, that their position is so important that  
11 they can't be a juror, because every juror also has sick  
12 leave and vacation time. And there are times when you just  
13 have to be absent from work, and this is one of those. You  
14 did have an opportunity to postpone your service if this was  
09:38:40 15 a difficult time. None of you did that. Sometimes that's  
16 for whatever reason. But once you're here, you would have  
17 to show an undue hardship.

18 It also doesn't mean that you can avoid jury duty  
19 because your employer doesn't pay for jury service. I wish  
09:38:58 20 every employer paid you while you were here for jury  
21 service. You have to also show that not only do you not get  
22 paid, but you won't be able to meet the -- your basic  
23 obligations, such as putting food on the table for your  
24 dependents, paying the electric bill and the rent or  
09:39:18 25 mortgage at the end of the month.

09:39:21 1 Another undue burden or hardship could be a  
2 disability. Again, you've had the opportunity to tell us  
3 that in the response to a summons that's issued. However,  
4 some -- sometimes something comes up in the meantime. You  
09:39:37 5 have a bad back, for example, or you have difficulty hearing  
6 perhaps. We don't want to exclude anyone from jury service  
7 because of a disability. And so, we can accommodate most.  
8 And again you had an opportunity to tell us; but even if you  
9 didn't, but you have a bad back, let us know. We'll put you  
09:39:55 10 in the back row and you can stand periodically if you need  
11 to stand. If you need to take breaks with some frequency  
12 because you are taking some medication or something like  
13 that, we can accommodate that. So you just need to let us  
14 know.

09:40:10 15 But if you have a disability or a reason why you  
16 can't be here during the time period -- sit in the chair you  
17 need to sit in and deliberate, listen to the evidence and  
18 then deliberate because of a disability -- then you can let  
19 me know.

09:40:31 20 Now, having said all of this, is there anyone here  
21 who believes they have what I've described as a legal  
22 hardship, a reason, an undue hardship that would cause them  
23 not to be able to be here for jury service?

24 And if so, raise your hand.

09:40:48 25 Okay. I don't see -- I see one hand in the back.

09:40:51 1 All right. What we're going to do is just give  
2 you a form that you'll fill out. I will review it. Wait  
3 until a break and fill it out. I may ask you follow-up  
4 questions.

09:41:03 5 You can go ahead and go on back and provide that  
6 to her.

7 I may ask you follow-up questions. And so, when  
8 we do take a break, you'll need to be available.

9 Did you see who raised their hand? It was the one  
09:41:21 10 person in the back. And we have one other person up in  
11 front. We have two people in front.

12 THE PROSPECTIVE JURORS: I don't, but I really  
13 need to use the restroom.

14 THE COURT: Right now?

09:41:36 15 PROSPECTIVE JUROR: Yes.

16 THE COURT: Okay.

17 PROSPECTIVE JUROR: I'm sorry.

18 THE COURT: No, no. We do have to stop whenever  
19 anyone is in that position.

09:41:44 20 Raise your hand high, if you are asking for a form  
21 to fill out. And keep in mind that simply asking for the  
22 form just gives you an opportunity to tell me. It doesn't  
23 mean that you're going to be excused, unless there's a very  
24 specific reason that I find constitutes a legal hardship.

09:42:05 25 All right. We're going to take a break. Keep

09:42:08 1 this in mind -- I have to give you at least some minimal  
2 instructions before you leave the room; and that is, you're  
3 not to discuss this case with anyone, each other or anyone  
4 else, anything you've heard so far. You have no evidence  
09:42:22 5 yet. You just have a brief little overview. Don't discuss  
6 it. Don't talk to each other. Don't use any search device,  
7 such as your phone, to communicate with anyone or to do any  
8 kind of research.

9 Then, come back in -- we're going to take a very  
09:42:37 10 brief break at this point in time. We'll take until 10  
11 'til, so six or seven minutes, just enough time for you to  
12 use the restroom and come back and then we'll resume from  
13 there.

14 Everybody who needs to use the restroom, please  
09:42:51 15 use it so that we can continue on without breaks for a  
16 little while.

17 THE CLERK: All rise.

18 *(Recess taken from 9:43 a.m. to 9:55 a.m.)*

19 *(The following proceedings were had in open court*  
09:55:45 20 *in the presence of the prospective jury:)*

21 THE COURT: All right. Welcome back, ladies and  
22 gentlemen.

23 We're going to move on to the next phase, and that  
24 is where I ask you questions. I will review the sheets that  
09:56:04 25 you've provided to me but, again, I'll do that at some point



09:56:09 1 later in the process. Right now we're just going to move on  
2 to where we engage in what we call voir dire, which is -- I  
3 think the literal translation of that is "to speak to the  
4 truth."

09:56:23 5 Our goal here is to pick an impartial and unbiased  
6 jury. That doesn't mean that you come to the courtroom  
7 without your common sense and your experiences. It may be  
8 experiences that you've gained through life or through your  
9 profession. None of that is disqualifying. We are simply  
09:56:41 10 looking for a jury that can keep an open mind throughout the  
11 process, can listen to the facts as they come in through the  
12 witnesses on the witness stand and the documents that are  
13 admitted and that in that way arrive at a verdict, find the  
14 facts from that evidence and arrive at a verdict. And so,  
09:57:04 15 as we go through the process of jury selection and asking  
16 questions and having you answer them, if there's any reason  
17 why you believe you might be biased or prejudiced in any  
18 way, it's your duty to disclose that. Also, even if you  
19 wouldn't be biased or prejudice, but you have some life  
09:57:27 20 experience that's asked about, you should let us know that  
21 and then the attorneys can at least evaluate that and make  
22 their decision.

23 Please understand that we won't be trying to ask  
24 personal questions for the sake of asking personal  
09:57:50 25 questions, but you heard what the case is about, and so my

09:57:53 1 questions will focus on some of that. If at any point in  
2 time there is an answer that you believe you need to give  
3 but that it's very personal in some way, or you would be --  
4 you would just feel very uncomfortable providing it in front  
09:58:09 5 of everyone, let me know by raising your hand just telling  
6 me, you know, you'd prefer to answer, you can say, in  
7 private or something along those lines. Keep in mind that  
8 it can't be entirely private because any answer you give  
9 will be in front of the attorneys and their clients, but  
09:58:25 10 we'll do it again during a break where I have everybody  
11 leave, and it will just be the court staff and the attorneys  
12 and myself who are present at that point in time.

13 You know, if it's something like your uncle's  
14 friend got a D.U.I. 10 years ago, those things are really  
09:58:43 15 not that personal. We've heard that many times before, and  
16 you can certainly answer that from your seat.

17 However, with that, I will simply get started.  
18 I'll ask some questions and then I'll give the attorneys an  
19 opportunity -- a few minutes to ask questions as well.

09:59:00 20 You heard the attorneys, I believe, identify  
21 themselves and their clients and they stood and looked at  
22 you. Is there anyone here who recognizes any of the  
23 individuals who introduced themselves?

24 No? Okay. And, again, just do this by raising  
09:59:22 25 your hand if you have a response, because I won't

09:59:24 1 necessarily see if you shake or nod your head.

2           You have been told that you may hear from certain  
3 witnesses. That was mentioned earlier. Obviously, you will  
4 hear from witnesses. So what I'm going to do is, I'm going to  
09:59:43 5 read from the witness list that I have. Keep in mind that  
6 not everybody on this witness list will necessarily testify.  
7 And I suppose it's possible that someone not on the list may  
8 testify, although that's very unlikely. But let me list the  
9 people here, name them for you, and I will ask you at the  
10:00:02 10 end if you recognize any of the names as someone you know:

11           Preslie Hardwick. Marcia Vreeken. Helen Dwojak.  
12 Patricia Dumas. Deanna Fogarty. Marlene Fogarty. Kevin  
13 Hardwick. Hannah Bell. Kendall Hardwick. Cary Hardwick.  
14 Marjorie Cain Mitchell. Mary Shumate. Peter -- is it  
10:00:38 15 "Hermes"? H-e-r-m-e-s.

16           MR. POWELL: I think I had one, up in the back one  
17 of those names. I may be mistaken.

18           THE COURT: I'm waiting until the end. I'm not  
19 going to stop in the middle, because then I'll never know  
10:00:50 20 where to start again. But keep in mind, if you put a hand  
21 up, I will come back to you. So keep in mind what you're  
22 thinking.

23           Joyce Riley. Sharon Grier. Maria Segovia. Lisa  
24 Celaya, C-e-l-a-y-a. Rachael Davis. Joy Hardwick. Martha  
10:01:16 25 Rogers. Cheryl Gibson. Russell Johnson. Thomas Howell.

1 Rachel Bavis.

2 And we come to the end. All right. Is there  
3 anyone here who recognizes those names?

4 All right. I have a hand in the very back. And  
5 is that Ms. Yarnal?

6 PROSPECTIVE JUROR: Yes, ma'am.

7 THE COURT: All right. You recognize names on  
8 there?

9 PROSPECTIVE JUROR: Yes. Three of the names.

10 THE COURT: Which names?

11 PROSPECTIVE JUROR: Thomas Howell. Dr. Johnson  
12 and Marjorie Mitchell.

13 THE COURT: Because those are evaluators and so  
14 you must work in that area?

15 PROSPECTIVE JUROR: Yes. I'm a family law  
16 attorney.

17 THE COURT: All right. And you've -- have you  
18 used those individuals before as evaluators in cases?

19 Your microphone is not working. I'm not sure if  
20 we --

21 No, we're going to need a new microphone if that's  
22 not working. We usually try to get -- put new batteries in  
23 before the beginning.

24 THE CLERK: I did.

25 THE COURT: Okay. Let's give this another -- we

10:02:22 1 always have technical difficulties. Okay. Just try  
2 speaking up and we'll try to remedy the problem in the  
3 meantime.

4 PROSPECTIVE JUROR: For Dr. Johnson, I've used him  
10:02:30 5 at least 20 times. I probably have five active cases with  
6 him currently.

7 Dr. Howell, I've used in one case, and I deposed  
8 him in his case. And Marjorie Mitchell, I know by  
9 association but have not used her.

10:02:47 10 THE COURT: All right. Based on your familiarity  
11 with the individuals who may be witnesses, do you think that  
12 you could be an unbiased juror in this case?

13 PROSPECTIVE JUROR: I do.

14 THE COURT: Listen to their testimony and decide  
10:03:00 15 who you believe, who you don't, who you think is credible or  
16 whether the information is accurate or inaccurate?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: All right. And that's what you do as  
19 a lawyer, in any event, often, isn't it?

10:03:14 20 PROSPECTIVE JUROR: Correct.

21 THE COURT: Okay. All right. But that is the  
22 kind of disclosure that we need. Even if you don't think  
23 that you would be biased or prejudice as a result, you still  
24 stand up and answer the question. So thank you very much.

10:03:27 25 PROSPECTIVE JUROR: You're welcome.

10:03:29 1 THE COURT: There may be more questions for you  
2 later, in light of your profession.

3 Anyone else here who recognizes any of the names  
4 that were called?

10:03:39 5 Okay. Now, as I said, the parties are not  
6 required to call all of these witnesses.

7 Does anyone here know anyone else who's here as a  
8 prospective juror? I ask that question because sometimes  
9 I've had uncle and nephew, boss and employee, and it is  
10:04:01 10 helpful to know just because of a possible jury dynamic that  
11 may result from that. No?

12 Okay. You have all heard the attorneys describe  
13 this case in their mini-opening statement. Is there anyone  
14 who, having heard that, has knowledge of the facts of this  
10:04:22 15 case, like, Oh, I know of this case? Or I know something  
16 about this, personally?

17 Okay. Don't see any hands. And, again, if the  
18 attorneys see hands that I don't see, do exactly what you  
19 did, which is alert me to that and then -- and then, I will  
10:04:40 20 call on the person.

21 Is there anyone here who either personally, they  
22 themselves, or a close friend or family member, anyone like  
23 that, has ever been involved in a lawsuit with circumstances  
24 similar to this?

10:05:00 25 All right. We have two sort of hands. We have --

10:05:04 1 we have a question. Whenever you would do this in your  
2 mind, hmm, I'm not sure, go ahead and raise your hand,  
3 because it can't hurt. So let's start with -- is it  
4 Ms. Palter?

10:05:16 5 PROSPECTIVE JUROR: Yes, ma'am.

6 THE COURT: All right. And what circumstance?

7 PROSPECTIVE JUROR: I actually took  
8 guardianship --

9 *(Court Reporter requests clarification for the*  
10:05:19 10 *record.)*

11 THE COURT: We don't have a microphone yet.

12 Are we getting one?

13 PROSPECTIVE JUROR: I took guardianship of my two  
14 younger sisters about 15 years ago who were in a similar  
10:05:34 15 situation, sexual assault. And they were taken away, and I  
16 had guardianship of --

17 THE COURT: And I see that it was 15 years ago  
18 that that happened. But you seem like it's still very  
19 emotional for you; is that right?

10:05:48 20 PROSPECTIVE JUROR: Yes.

21 THE COURT: Do you think that you could set aside  
22 what you went through?

23 You think it would be very difficult for you to do  
24 that.

10:05:56 25 All right. So you might make decisions in this

10:06:01 1 case, based on your own experience? Might even be difficult  
2 for you to listen during the case; is that right?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: Okay. All right. Thank you.

10:06:12 5 And we have Mr. Lagorio.

6 *(Court Reporter requests clarification for the*  
7 *record.)*

8 THE COURT: I'm sorry. We'll come back in just a  
9 moment to you, sir; and then -- and we'll go here first,  
10:06:25 10 because I forgot after your hand went down, but we'll come  
11 back.

12 PROSPECTIVE JUROR: Yeah, my sister is a victim of  
13 domestic violence.

14 THE COURT: All right. And is that domestic --  
10:06:38 15 her spouse?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: Okay. And is there a lawsuit going on  
18 relating to that?

19 PROSPECTIVE JUROR: It's ongoing right now, yes.

10:06:47 20 THE COURT: Okay. And what kind of -- in what  
21 context? What court?

22 PROSPECTIVE JUROR: They live in San Joaquin  
23 County.

24 THE COURT: Okay. So is there -- is it a divorce  
10:07:00 25 proceeding or just a domestic violence proceeding of some



10:07:03 1 sort?

2 PROSPECTIVE JUROR: Yeah. Just a domestic  
3 violence. She has been talking to police and --

4 THE COURT: Okay. And just so you understand,  
10:07:12 5 there won't be any -- and it's important that you identify  
6 that. I don't think -- at least from what I've seen here --  
7 that there's allegations that you'll be hearing relevant to  
8 this case of domestic violence, right. There were -- there  
9 are allegations and there will be discussion of -- it sounds  
10:07:35 10 like -- sexual abuse or allegations of sexual abuse and the  
11 investigation of that, but I don't think there's going to be  
12 any spousal domestic violence as an issue here.

13 Is that something that -- is there anything -- are  
14 there children involved in that with your sister?

10:07:58 15 PROSPECTIVE JUROR: She has three children, and --  
16 yeah.

17 THE COURT: Okay. All right. Do you think that  
18 you'd be able to be an unbiased juror in this case, knowing  
19 it doesn't involve domestic violence?

10:08:12 20 PROSPECTIVE JUROR: I'm not sure.

21 THE COURT: How do you think it might affect you  
22 in this case?

23 PROSPECTIVE JUROR: Without knowing everything, I  
24 guess I can't really say. I just know that going into this,  
10:08:23 25 I'm already unbiased -- you know, unbiased. I feel that if

10:08:31 1 this person has put themselves in this position, that  
2 they're most likely guilty.

3 THE COURT: All right. I'm not sure which person  
4 right now, but let me just ask: You understand that there's  
10:08:45 5 been no findings by anybody about anything that's happened  
6 yet. That would be the job of the jury to sit and listen to  
7 the facts in the case and to make a determination, right?  
8 And you would understand, for example, each of you, if you  
9 had allegations that you were either making or on the other  
10:09:04 10 side of, you would want a full -- full investigation, right?  
11 And so that's really the jury's job here.

12 Do you think you could listen to the testimony in  
13 this case and then make a decision about what you believed  
14 the facts are?

10:09:22 15 PROSPECTIVE JUROR: Well, at this point, I don't  
16 think I have a choice, right?

17 THE COURT: Well, I'm asking. You know, I want --  
18 I want --

19 PROSPECTIVE JUROR: I'm answering.

10:09:29 20 THE COURT: Because a lot of times people will  
21 say, *Well, I'll try, or I think I will, or I don't know.*  
22 And I just want to -- I just probe a little bit so that I  
23 understand, because a lot of times people just say, *Well,*  
24 *how do I know what I'm going to do, because that's not in*  
10:09:44 25 *front of me right now. I can't predict of the future. And*

10:09:48 1 that's true. That's true. You don't know what's going to  
2 come in.

3 But the question is: Will you wait and see what  
4 comes in before you make a decision? You base it on what  
10:09:57 5 you see here in the --

6 PROSPECTIVE JUROR: Like I've said, I -- at this  
7 point, I really cannot give this case a fair shake.

8 THE COURT: Okay. All right. Thank you.

9 If you can hand the microphone back. And I'm  
10:10:11 10 first going to go to Mr. -- is it? -- Abbott.

11 All right. He had his hand raised earlier. And  
12 then, we'll go to you, Mr. Zola.

13 PROSPECTIVE JUROR: When -- when my older  
14 stepbrother was a younger child, he endured a custody battle  
10:10:29 15 as part of divorce proceedings between my mother and her  
16 first husband.

17 THE COURT: Okay. So you heard about that, or  
18 were you --

19 PROSPECTIVE JUROR: I've heard about it. I'm not  
10:10:37 20 aware of too many particulars --

21 THE COURT: All right.

22 PROSPECTIVE JUROR: -- pertaining to the case.

23 THE COURT: And you would understand that if you  
24 were selected as a juror in this case, it would be your duty  
10:10:47 25 while you're here not to start talking to your family about,

10:10:50 1 Well, what happened there? And how does that compare to  
2 what's happening -- what I'm hearing in court here?

3 PROSPECTIVE JUROR: Right.

4 THE COURT: That you would be obligated to just  
10:10:59 5 focus on the evidence, not discuss it with anyone until  
6 you'd been discharged as a juror after having reached a  
7 verdict.

8 PROSPECTIVE JUROR: Right.

9 THE COURT: And you would be able to do that?

10:11:10 10 PROSPECTIVE JUROR: I do believe so, yes.

11 THE COURT: Okay. And do you think that you could  
12 be a fair and unbiased juror using the definition I've used,  
13 which is, keeping an open mind and listening the evidence?

14 PROSPECTIVE JUROR: I do.

10:11:21 15 THE COURT: Okay. All right. Thank you.

16 And then, if you can pass that down to Mr. -- is  
17 it Zola?

18 PROSPECTIVE JUROR: Yes. Yes. You can hear me?

19 THE COURT: Yes, I can.

10:11:29 20 PROSPECTIVE JUROR: Forty years ago, I was  
21 involved in a child custody dispute. And it was very  
22 painful and very dramatic. And I was accused of sexual  
23 abuse which was -- didn't happen. But as I was listening to  
24 the attorneys present their summaries of the case, it was  
10:11:56 25 very disturbing to me. I feel like I was treated unfairly,

10:12:01 1 and I probably have -- I'm confident I have a bias that I  
2 would be -- take the male's side. And I understand there  
3 may not be a male involved in the decisions in the  
4 deliberations, but I really have this concern that it  
10:12:24 5 wouldn't -- I would be difficult -- it would be very  
6 difficult for me to make a fair decision.

7 THE COURT: All right. So you think that your  
8 determination of the facts would be colored by your own  
9 experience?

10:12:38 10 PROSPECTIVE JUROR: Yes.

11 THE COURT: And that you would favor the side that  
12 you were -- where you felt you were treated unfairly. You  
13 would perhaps weigh the evidence in favor of the -- of  
14 finding that the allegations are false, or something to that  
10:12:53 15 effect?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: All right. Thank you for that.

18 And I wanted to make sure that everyone  
19 understands here and -- just, as in any case I have --  
10:13:10 20 oftentimes, I have criminal cases. This is a civil case.  
21 It's not a criminal case. I have criminal cases. And it  
22 may be a bank robbery case, for example. And a juror will  
23 raise their hand and say, *Well, you know, I'm really against*  
24 *bank robberies. Or I was robbed once, so I can't be fair.*

10:13:30 25 I don't mean this as to you, Mr. Zola, but you

10:13:34 1 just caused me to think of something. *So I can't be fair.*

2 And to be honest, there's no one who thinks bank  
3 robbery is good, who thinks it's appropriate, who thinks  
4 that -- there's really no side necessarily on that. It's  
10:13:48 5 just what are the facts. Did it occur? Did it not occur?  
6 Were the elements of the crime met or were they not met, so  
7 you're making a factual determination. You're not deciding  
8 whether the underlying act is good or bad. You're deciding  
9 whether or not it's been proven or not true.

10:14:06 10 And, here, this is just one element of the case.  
11 It's not a -- or one aspect, an allegation in the case. It  
12 may or may not end up being central to the case. But you  
13 understand we're just asking if you can keep an open mind  
14 and make a determination based on what you hear here in the  
10:14:24 15 courtroom, all right? That's what we're looking for. And  
16 we've had several people who've had very specific  
17 experiences who say that will be difficult for them.

18 All right. Anyone else who had an answer to that  
19 question?

10:14:41 20 Yes.

21 PROSPECTIVE JUROR: Well, I have an open mind and  
22 I can set aside, but I'm not sure if it pertains. I did  
23 foster a child that was pulled from the home for -- two  
24 years ago and my sister took over. And she just finished  
10:14:56 25 adopting the child. I don't know if it pertains. He was

10:15:00 1 taken away for neglect. Mom does have some mental health  
2 issues, so I'm not sure if it will pertain.

3 THE COURT: It's an experience that you've had,  
4 and thank you for sharing that. It's probably going to come  
10:15:17 5 up in questions that I ask later. And so, you've already  
6 shared it, so you won't need to let us know again.

7 Is there anything about that experience, though,  
8 that you think means you can't listen to the evidence here  
9 and make a determination on what the facts are here in this  
10:15:33 10 case?

11 PROSPECTIVE JUROR: No.

12 THE COURT: Okay. All right. So any other -- any  
13 other responses?

14 The question was whether or not there was anyone  
10:15:44 15 who was involved in any kind of claim or lawsuit proceeding  
16 similar to the one that -- or may involve some of the same  
17 issues that are being involved in this case.

18 And, again, I think for this -- at this point, I'm  
19 excluding anything that's just sort of a simple divorce  
10:16:07 20 proceeding, although I may get to that at some point.

21 PROSPECTIVE JUROR: I'm a child/adolescent  
22 psychiatrist, and I deal with a lot of these issues.

23 THE COURT: Would you mind standing up so I can  
24 see you and the attorneys can.

10:16:17 25 Thank you.

10:16:18 1 PROSPECTIVE JUROR: I'm a child/adolescent  
2 psychiatrist and I deal with this [sic] issues a lot. And I  
3 know when I'm dealing with this issues, I err on the side of  
4 caution. So I'm likely to side with the people who took the  
10:16:29 5 children away, only because that's the safest way and then  
6 everything else is ironed out afterwards. And it's always a  
7 difficult case and everyone can make a case as to how  
8 horrendous it was or how much better the children are. So  
9 it's very difficult for me to be objective, because I know  
10:16:49 10 what side I'm coming from. And I know what the systems  
11 [sic] are in place to ensure safety more than anything.

12 THE COURT: So you think that you would have  
13 trouble basing your decision on the evidence that's  
14 presented in this case?

10:17:03 15 PROSPECTIVE JUROR: Yes.

16 THE COURT: That you may harbor a particular basis  
17 based on your experience, as you said, a child and  
18 adolescent psychologist?

19 PROSPECTIVE JUROR: Psychiatrist, yes.

10:17:15 20 THE COURT: Psychiatrist.

21 All right. And have you been involved in  
22 proceedings where there have been accusations by one parent  
23 against another --

24 PROSPECTIVE JUROR: Not in proceedings. Because  
10:17:25 25 what I tend to do is I encourage the parents to see a



1 mediator. Because once I've treated the child, I tend to  
2 side on the child. That's my responsibility. And I know  
3 that both parents will have their own agendas and it's hard  
4 to iron that out.

5 THE COURT: All right. Thank you.

6 And, again, the attorneys may have additional  
7 questions for any of you. I may not have asked all of the  
8 questions. One moment.

9 (Pause.)

10 THE COURT: Okay. Let me just ask some more  
11 specific questions. If you've already answered these  
12 questions, you don't have to repeat; but if there's new  
13 information, please do let me know.

14 Have any of you or any members of your family or  
15 anyone close to you ever had any training or work experience  
16 as a social worker or in social work?

17 Okay. We have a couple of hands here. We'll  
18 start in the front row and then move to the back row.

19 And that is, is it Ms. --

20 PROSPECTIVE JUROR: Maquitico.

21 THE COURT: -- Maquitico?

22 PROSPECTIVE JUROR: Yeah, Maquitico.

23 THE COURT: Oh, I got it. Okay. A lot of  
24 syllables.

25 PROSPECTIVE JUROR: I hold a bachelor's in human

10:18:46 1 services. So a lot of my coursework was child -- I took  
2 courses in child abuse, crisis intervention, case  
3 management, stuff like that.

4 THE COURT: Okay. So that's been your class work  
10:18:57 5 and your coursework?

6 PROSPECTIVE JUROR: Yeah.

7 THE COURT: So you may have some knowledge in that  
8 area?

9 PROSPECTIVE JUROR: Right.

10:19:02 10 THE COURT: Would you be able to listen to  
11 witnesses and experts and keep an open mind while you're  
12 listening?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: Do you think there's anything about  
10:19:12 15 your coursework or class work or any other experience that  
16 might bias you in a way that would be unfair to one side or  
17 the other?

18 PROSPECTIVE JUROR: No.

19 THE COURT: All right. Thank you.

10:19:23 20 And then in the back row, we have Mr. -- is it  
21 Mr. Tapia?

22 PROSPECTIVE JUROR: Yes.

23 THE COURT: All right.

24 PROSPECTIVE JUROR: I, too, took coursework in  
10:19:32 25 college, in sociology, relating to social work type of

10:19:37 1 classes. And, currently, I -- I'm employed with a social  
2 services agency as an eligibility technician.

3 THE COURT: All right. And what does an  
4 eligibility technician do?

10:19:47 5 PROSPECTIVE JUROR: My particular duties involve  
6 just evaluating cases for food stamps. I do come across  
7 clients from time to time that express concern about  
8 potential child abuse, sexual abuse, stuff like that.

9 THE COURT: All right. It's not your area to  
10:20:07 10 investigate that or make determinations about child abuse or  
11 sexual abuse?

12 PROSPECTIVE JUROR: No. Just report as needed.

13 THE COURT: All right. And have you ever had  
14 occasion where you've had to report?

10:20:19 15 PROSPECTIVE JUROR: I did about probably under a  
16 month ago.

17 THE COURT: Okay. Other than that, have you had  
18 any other experiences?

19 PROSPECTIVE JUROR: No.

10:20:26 20 THE COURT: Okay. Do you think you would be able  
21 to keep an open mind and listen to the testimony and decide  
22 the facts of the case here based on the testimony you hear  
23 in court?

24 PROSPECTIVE JUROR: I think so, yes.

10:20:37 25 THE COURT: All right. Thank you.

10:20:38 1 And then we have Ms. Nguyen.

2 PROSPECTIVE JUROR: Yes. Yes. I am in the same  
3 situation that he is. I am not a social worker, but I'm  
4 eligibility technician and working for social services also  
10:20:52 5 for Cal-Fresh program.

6 THE COURT: For the Cal-Fresh program.

7 PROSPECTIVE JUROR: I don't have any experience  
8 related about that case or any kind like that with my  
9 client.

10:21:05 10 THE COURT: Okay. No cases of child abuse or  
11 sexual abuse, or anything like that?

12 PROSPECTIVE JUROR: No.

13 THE COURT: Okay. Thank you.

14 Two eligibility technicians sitting two seats  
10:21:17 15 apart from each other. We always have such coincidences  
16 here.

17 All right. Any other hands raised relating to  
18 someone who has been a social worker or has experience in  
19 social work other than what we've already heard?

10:21:35 20 PROSPECTIVE JUROR: I do -- I do have a sister  
21 that is a school counselor. You were asking family members  
22 as well, correct?

23 THE COURT: That's correct. That's correct.

24 Is she like a psychological counselor, or a  
10:21:46 25 typical, like, high school counselor?

10:21:50 1 PROSPECTIVE JUROR: High school counselor.  
2 Probably like curriculum-associated.

3 THE COURT: Okay. All right. Thank you. I don't  
4 think that's necessarily going to be -- come into play.  
10:21:59 5 But, again, whenever you're wondering, go ahead and answer.

6 All right. Has anyone here, other than what  
7 you've already told us about, ever had any specific  
8 experiences with social services or a social services  
9 agency, such as child protective services?

10:22:23 10 We have one hand in the back. Mr. Tapia.

11 PROSPECTIVE JUROR: Yes. When I was younger, I  
12 was visited by a social worker in regards to suspected child  
13 abuse that was going on in the home.

14 THE COURT: In your home?

10:22:41 15 PROSPECTIVE JUROR: Yes.

16 THE COURT: When you were a child?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: Was there just one visit, or was there  
19 any further --

10:22:48 20 PROSPECTIVE JUROR: From what I recall, there was  
21 just one visit.

22 THE COURT: All right. Anything about that  
23 circumstance -- how old were you at the time?

24 PROSPECTIVE JUROR: I want to say I was around  
10:22:56 25 seven, maybe eight.

10:22:58 1 THE COURT: Okay. Do you have much of a  
2 recollection of it?

3 PROSPECTIVE JUROR: No. Just a vague remembrance  
4 of it, of the questions that they were asking me.

10:23:07 5 THE COURT: Okay. Anything about that experience  
6 that you think would cause you not to be able to be fair  
7 here or would color your views here?

8 PROSPECTIVE JUROR: I don't think so.

9 THE COURT: Okay. All right. Thank you.

10:23:18 10 Anyone else? Yes, Ms. -- is it McCann?

11 PROSPECTIVE JUROR: Yes. I was the assistant  
12 superintendent of business for Garden Grove Unified School  
13 District in charge of all operations, including risk  
14 management. And many times I was the one to help school  
10:23:38 15 principals interpret whether or not -- when they received  
16 family law orders whether or not they had to release the  
17 child to one parent or the other.

18 THE COURT: Okay. All right. So you would help  
19 them look at the orders and decide -- make a decision about  
10:23:54 20 what the school's responsibility was in that context.

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: Okay. Is there anything about that  
23 role that you played that you think will impact your ability  
24 to be a fair juror here?

10:24:05 25 PROSPECTIVE JUROR: I think I can be a fair juror,

10:24:06 1 except for we always followed the order.

2 THE COURT: Right. Okay. And I don't know that  
3 that's going to be anything that is relevant here in that  
4 sense. But, again, that's important that you share that so  
10:24:23 5 that the attorneys can follow up with any questions they may  
6 have.

7 All right. Anyone else?

8 Yes. Mr. Zola.

9 PROSPECTIVE JUROR: During my second marriage, my  
10:24:37 10 wife and I were foster parents for five years. Quite a few  
11 of the children that we had were removed from their families  
12 because of sexual abuse. And that doesn't -- it doesn't  
13 adversely affect my abilities to make a judgment as much as  
14 the previous discussion that I presented to you.

10:25:03 15 THE COURT: All right. Thank you.

16 Anyone else? All right. I don't see any further  
17 hands on that.

18 Is there anyone here who has had any particularly  
19 positive or negative experiences in family law court?

10:25:27 20 I don't see any -- I'm not sure of anyone who has  
21 had a particularly positive experience in family law court.  
22 I don't even know that that was an appropriate question to  
23 ask, but maybe.

24 Yes.

10:25:38 25 PROSPECTIVE JUROR: Can you reliterate [sic] the

10:25:39 1 question?

2 THE COURT: Sort of rephrase it to make it  
3 clearer?

4 PROSPECTIVE JUROR: Yes.

10:25:44 5 THE COURT: Yes. I'm happy to do that.

6 You're going to be hearing, based on what I just  
7 heard in the mini-opening statement, about family law  
8 proceedings and what happened there and what the parties  
9 went through. And, again, we just want to make sure that

10:26:02 10 jurors can decide cases based on what comes in here. So if  
11 you've had a particularly negative experience in family  
12 court -- you thought you were treated completely unfairly,  
13 you thought that -- you were dragged through a proceeding  
14 for years and years with your ex, all of those sorts of  
10:26:20 15 things, those might be relevant because those are  
16 experiences that you may be hearing about in the context of  
17 this case, right? And I don't know which side that may  
18 favor or not favor, but at least it's something that the  
19 attorneys may want to know about.

10:26:40 20 PROSPECTIVE JUROR: Okay. Well, I had a family --  
21 we went to court with my ex. It was a little rough just  
22 with the mediator, because I always felt that the mediator  
23 was taking dad's side of just the evidence that they  
24 provided. But in all end [sic], it turned out fine. We  
10:26:57 25 just had to share custody and stuff.



10:27:00 1 THE COURT: So in the end, you feel like the -- it  
2 worked out?

3 PROSPECTIVE JUROR: Yeah.

4 THE COURT: All right. Is there anything about  
10:27:06 5 that experience that you think might cause you to favor one  
6 side or the other in this particular case?

7 PROSPECTIVE JUROR: I believe not.

8 THE COURT: All right. Thank you.

9 Anyone else?

10:27:17 10 All right. Ms. Palter.

11 PROSPECTIVE JUROR: I just got done with court  
12 with my ex. I have full custody of my kids. And it dragged  
13 on for years. And I just felt like it wasn't fair. They  
14 didn't want to hear anyone's side. It was more -- I'm glad  
10:27:34 15 they finally got the kids involved, but I didn't -- the kids  
16 didn't want to get involved. I'm sorry they had to do that,  
17 but I didn't think it was fair.

18 THE COURT: And so it was just not a fair  
19 proceeding?

10:27:44 20 PROSPECTIVE JUROR: It's wasn't a fair proceeding.

21 THE COURT: Not a fair process.

22 PROSPECTIVE JUROR: Not at all.

23 THE COURT: Well, that's what we want to cure  
24 here. We want to make sure that both sides have a fair  
10:27:53 25 process and have a jury that will listen and make a decision

10:27:54 1 based on the facts, which is what everybody would want if  
2 they were in a proceeding, right?

3 So, is there anyone else here who's had any other  
4 experiences like that that they need to tell us about?

10:28:09 5 No.

6 Okay. All right. Is there anyone who's just been  
7 a party to a lawsuit before, regardless of whether it's like  
8 this one or not? You know, you've been either a plaintiff  
9 or a defendant in a civil lawsuit.

10:28:32 10 Okay. We have three hands. And the question that  
11 I'm going to ask you -- you can go ahead and go back -- keep  
12 your hand raised, please.

13 All right. In the corner. Mr. Cook.

14 PROSPECTIVE JUROR: Yes.

10:28:48 15 THE COURT: I'm not going to ask you the details  
16 of it. I just wanted to find out, was there anything about  
17 that experience that was -- that you think might impact your  
18 ability to be a fair juror here?

19 PROSPECTIVE JUROR: No. It's ongoing right now,  
10:29:05 20 but no.

21 THE COURT: Okay. And is it a process that you  
22 think is a fair process?

23 PROSPECTIVE JUROR: I'm --

24 THE COURT: You'll know when the results come in,  
10:29:14 25 right?

10:29:14 1 PROSPECTIVE JUROR: Yeah, exactly. I'm a  
2 defendant in a civil matter, a named defendant in a real  
3 estate transaction.

4 THE COURT: All right. Do you think that you  
10:29:24 5 could be fair to both the plaintiff and a defendant in a  
6 civil lawsuit, if it doesn't necessarily relate to a  
7 real estate transaction?

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: All right. Thank you.

10:29:37 10 And we had other hands. So before we come up  
11 here, we have -- is it Ms. Spiezia?

12 PROSPECTIVE JUROR: Yeah. My husband's  
13 real estate company was also sued in a lawsuit, and I was  
14 named. I was sued also.

10:29:54 15 THE COURT: Okay. Yes.

16 PROSPECTIVE JUROR: But it was a couple of years  
17 ago. I thought the proceedings were fair, and I don't see  
18 how it would affect anything.

19 THE COURT: Okay. Thank you.

10:30:03 20 But it is important that you respond when I ask  
21 the questions, right, because you all raised your hand and  
22 said you would respond, even if you think it might not be  
23 relevant.

24 In the front row, I think -- oh, the front row,  
10:30:14 25 starting with -- is it --

10:30:16 1 PROSPECTIVE JUROR: Courchaine.

2 THE COURT: All right. Mr. Courchaine.

3 PROSPECTIVE JUROR: Yeah, I was named in a  
4 lawsuit. My wife was in a car accident. So, just -- I  
10:30:23 5 thought it was fair. No big deal. I just wanted to make  
6 sure that you were aware of it.

7 THE COURT: All right. So it was just a car  
8 accident and there's -- sometimes there are lawsuits coming  
9 from those.

10:30:32 10 PROSPECTIVE JUROR: Never actually got into a  
11 courtroom. It just was handled. I just wanted you to know.

12 THE COURT: All right. Thank you.

13 And then there were hands I saw in the back.  
14 Ms. McCann.

10:30:44 15 PROSPECTIVE JUROR: Yes. I've been named in the  
16 course and scope of my employment with the school  
17 district -- civil and contractual matters -- but eventually  
18 dismissed or they named the agency only.

19 THE COURT: All right.

10:30:58 20 PROSPECTIVE JUROR: For -- after I was dismissed.

21 THE COURT: All right. Understood.

22 And anything -- well, anything about that  
23 experience that you think would cause you not to be able to  
24 be fair in this case?

10:31:10 25 PROSPECTIVE JUROR: Well, I think I can be fair.

10:31:14 1 But, you know, a lot of our matters were very frivolous.

2 THE COURT: All right. So you would -- and I  
3 think everybody here probably understands that there are  
4 lawsuits -- there are lawsuits that are frivolous and  
10:31:29 5 lawsuits that are not. And "frivolous" is in the eye of the  
6 beholder. Here the beholder is the jury, right?

7 So do you think you would be able -- someone has  
8 to decide what the facts are. Do you think that in the back  
9 of your mind a thought that lawsuits may be frivolous would  
10:31:45 10 prevent you from deciding, oh, this lawsuit has merit; or,  
11 oh, this is what these facts are here in this case. I'm  
12 just going to focus on this and not the McDonald's hot  
13 coffee lawsuit, right, which everybody seems to raise as  
14 their -- the epitome of what they think was a frivolous  
10:32:05 15 lawsuit or an inappropriate jury award?

16 Do you think you could be fair and listen to the  
17 facts and then decide?

18 PROSPECTIVE JUROR: Yes, I believe so.

19 THE COURT: Okay. Anyone else who has been  
10:32:20 20 involved in a lawsuit of any sort as a party?

21 Okay. Let me take a look. Is there anyone here  
22 who has any -- other than what I've already learned, has any  
23 special training in the law, for example? We have one  
24 person who raised her hand as an attorney, a family law  
10:32:51 25 attorney.

10:32:52 1 Is there anyone else who has any particular  
2 training? And I think we've gone through social work  
3 already, so I won't burden you with that question again.

4 All right. Now, in a civil lawsuit, plaintiff --  
10:33:06 5 and you'll hear this in the instructions later -- plaintiff  
6 has a burden of proving their case by preponderance of the  
7 evidence. Now, some of you may have served as jurors in  
8 criminal trials before where you've heard different  
9 instructions about evidence beyond a reasonable doubt.

10:33:25 10 Does anyone think that you can set aside whatever  
11 it was you heard in another case and follow my instructions  
12 in this case, whether it's on the burden of proof or any  
13 other legal instructions that I provide?

14 And I guess another way of saying it is that when  
10:33:42 15 it comes to the facts in this case, if you're selected as a  
16 juror, you will be the judge of the facts, so you think of  
17 yourselves of wearing a black robe when it comes to the  
18 facts of the case. You are the judge. I don't have enough  
19 to go around, but figuratively you're wearing a black robe.  
10:33:58 20 But when it comes to the law of the case, I keep my black  
21 robe. I decide what the law is and I let you know what that  
22 is.

23 Is there anyone here who thinks if they disagreed  
24 with my instructions on the law they wouldn't be able to  
10:34:10 25 follow them?

10:34:12 1 All right. So I have your commitment that if  
2 you're selected as a juror, you would follow the  
3 instructions on the law? Yes?

4 Okay. All right. I don't see -- I don't hear any  
10:34:24 5 objections.

6 All right. So now what I'm going to do is turn to  
7 the questionnaire that you have. You should have somewhere  
8 around your seat or your neighbor may have a copy, if you  
9 don't, of the -- of a questionnaire. It looks something  
10:34:44 10 like this (indicating) where you're going to tell us your  
11 name, where you live -- just the city or town -- what you do  
12 for a living -- what your occupation is and who your  
13 employer is. If you're retired or you're not working, for  
14 whatever reason, but you have an occupation, or -- tell us  
10:35:04 15 what your most recent employment was.

16 If you have a spouse or someone with whom you have  
17 a significant relationship, then tell us what that person  
18 does, who their employer is. And your children, if you have  
19 children, tell us how many, how old they are. If they are  
10:35:27 20 adults, tell us what they do for a living. If your son or  
21 daughter is in high school and, you know, working at a  
22 Jamba Juice, you don't have to necessarily let us know that,  
23 but I just mean as a career, something along those lines.

24 Let us know whether you've ever served on a jury.  
10:35:48 25 And in that regard, just tell us was it civil or criminal

10:35:52 1 and briefly what it was, you know, like I said, bank  
2 robbery, D.U.I., contract dispute, personal injury,  
3 something like that.

4 And were you able to reach a verdict? Don't tell  
10:36:02 5 us what the verdict was. Just say, *Yes, we reached a*  
6 *verdict* or, *No, we weren't able to*. I won't be  
7 interrupting, really, with any questions, because we're  
8 going to go through everybody here. And only if I don't  
9 understand or can't hear something that you say, I might  
10:36:18 10 interrupt with a question. And we will begin with -- we'll  
11 just pass the microphone down.

12 We'll begin with "Ms. Creel," is it?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: All right.

10:36:30 15 PROSPECTIVE JUROR: My name is Judith Creel. I  
16 live in Irvine. I'm retired. I was in advertising. I  
17 worked in an advertising agency that happened to be owned by  
18 my husband. He's retired as well.

19 I have no children. I served on a jury. It was a  
10:36:50 20 criminal case. It was assault. And, yes, we reached a  
21 verdict.

22 THE COURT: Thank you.

23 And you can just hand the microphone. Yes.

24 Perfect.

10:37:00 25 PROSPECTIVE JUROR: Okay. My name is Jordana



10:37:01 1 Gergis. I live in Mission Viejo.

2 I am an ABA therapist for Easter Seals.

3 And no to the rest of the questions.

4 THE COURT: All right. And when you said an "ABA  
10:37:16 5 therapist" --

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: -- can you just tell us what that is?

8 PROSPECTIVE JUROR: I work with kids with autism.

9 THE COURT: All right. Thank you.

10:37:25 10 PROSPECTIVE JUROR: My name is Sue McCann. I live  
11 in the City of Orange. I was the -- I'm retired four years  
12 from the Garden Grove Unified School District. I was the  
13 assistant superintendent of business and operations.

14 My husband is retired, and he was -- worked for  
10:37:44 15 Kaiser Permanente in business operations in -- I'm not sure  
16 what he did -- project management.

17 I have two children. They are young men now, ages  
18 32 and 34. One of them is a pharmacist for Kaiser  
19 Permanente and the other is a software engineer for Boeing.

10:38:09 20 And I have served on a jury before only as an  
21 alternate. And I can't remember if it was a criminal or  
22 civil case, but it involved indecent exposure. And the jury  
23 was able to reach a verdict.

24 THE COURT: All right. Thank you.

10:38:24 25 PROSPECTIVE JUROR: My name is Jeff Abbott. I

1 live in Lake Forest, California. I'm a student at the  
2 University of Redlands. I'm not employed; never have been.

3 I'm single. I don't have any children. And I've  
4 never served on a jury.

5 THE COURT: Thank you.

6 PROSPECTIVE JUROR: My name is Jesse Tapia.

7 I live in the City of Orange. I'm a Cal-Fresh  
8 eligibility technician. I'm not married or have any  
9 children.

10 I have served on a jury before. I believe it was  
11 civil. It involved a female that was accused of vandalizing  
12 a Buddhist temple. We were not able to reach a verdict.

13 THE COURT: Thank you.

14 PROSPECTIVE JUROR: My name is Martin Zola. I  
15 live in Laguna Beach. I'm retired. And I was a business  
16 owner and a consultant.

17 THE COURT: What kind of business?

18 PROSPECTIVE JUROR: IT and consulting.

19 Five children. Two adopted. Two have passed  
20 away. The children's ages ranged from 33 to 50.

21 I did serve on a jury. It was a civil case, and  
22 the -- the jury reached a verdict, and it was reached very  
23 quickly.

24 THE COURT: Thank you.

25 PROSPECTIVE JUROR: My name is Phuong-Chi Nguyen.

10:39:57 1 I live in Santa Ana, Orange County. I am employed with  
2 social services agency as an eligibility technician for  
3 Cal-Fresh.

4 My spouse is working with Meggitt, M-e-g-g-i-t.

10:40:21 5 I have two adult children: One is a salesmen  
6 [sic] with AAA. And my daughter is Interventional  
7 Cardiology, in Dallas.

8 And I have never served on a jury.

9 THE COURT: Thank you.

10:40:41 10 PROSPECTIVE JUROR: My name is William Leon. I  
11 live in La Habra, and I am driver for MB Transportation for  
12 senior and disabled.

13 I've been separated from my spouse for the past  
14 two years. I have three children. They're 24, 21 and 17.  
10:41:03 15 The 24-year-old works at Sam's Club. The 21 is unemployed.  
16 And the 17-year-old is in high school, not working.

17 And I never served on a jury.

18 THE COURT: Thank you.

19 We'll send that all the way down to the other end,  
10:41:20 20 because you're Juror No. 16, and we have to go to Juror No.  
21 9, first.

22 PROSPECTIVE JUROR: Is it okay if I stay sitting?  
23 My back kind of hurts.

24 THE COURT: Yes, you may.

10:41:31 25 PROSPECTIVE JUROR: Hello, my name is

10:41:31 1 Arte Figueora. I'm from Anaheim. My current employer is  
2 the Pizza Press. And I do not have any children or a  
3 spouse.

4 And yes, I have served on a jury. It was a  
10:41:48 5 criminal case, and we did reach a verdict.

6 THE COURT: Thank you.

7 PROSPECTIVE JUROR: My name is Patrick Courchaine.  
8 I live in the City of Orange. I am an advanced technology  
9 technician with Orange County Transportation Authority.

10:42:05 10 My wife is an IT director for Fairmont Private  
11 Schools.

12 We have no children. And I've been on five cases;  
13 three criminal, two civil. We reached verdicts in all of  
14 them.

10:42:20 15 Do you want me to go through them in a little more  
16 detail?

17 THE COURT: You said three criminal and two civil.  
18 What were the two civil ones?

19 PROSPECTIVE JUROR: One was a homeowners'  
10:42:32 20 association suing a developer and the other one was a client  
21 suing her attorney for misrepresentation.

22 THE COURT: Malpractice?

23 PROSPECTIVE JUROR: Yeah, like divorce. She was  
24 going through a divorce and she claimed that that attorney  
10:42:51 25 botched her divorce, so she hired another attorney to sue

10:42:55 1 that attorney.

2 THE COURT: Okay.

3 PROSPECTIVE JUROR: And her attorney was her  
4 husband who was also an attorney, so it was interesting.

10:43:02 5 THE COURT: All right. Thank you.

6 PROSPECTIVE JUROR: Hello. My name is  
7 Edward Hanke. I live in Aliso Viejo. I'm retired. I used  
8 to be a millwright for Aluminum Company of America and  
9 Bill Bos Bay Bloats.

10:43:20 10 My wife is a nurse at Hoag Hospital. I have two  
11 children: One, 33 and one, 29. My eldest was a Marine and  
12 now works at the Montage Hotel. My youngest is a patient  
13 companion for Hoag Hospital.

14 I have served on a jury. It was a criminal case,  
10:43:43 15 and I was an alternate. The case was about a robbery, and  
16 they did reach a verdict.

17 THE COURT: Thank you.

18 PROSPECTIVE JUROR: Hi. My name is Abigail  
19 Maquitico. I live in the City of Anaheim. I'm an after  
10:44:01 20 school instructor for Santa Ana Unified School District.

21 My fiancé's occupation is a design developer for  
22 Oakley. We don't have any children. And I have never  
23 served in a jury [sic].

24 THE COURT: Thank you.

10:44:16 25 PROSPECTIVE JUROR: Hi. My name is Thomas Lee.

1 I live in the [sic] Fullerton.

2 (Court Reporter requests clarification for the  
3 record.)

4 PROSPECTIVE JUROR: I'm a salesman. And I live  
5 with my wife. She's a housekeeper. And then two children:  
6 One of them is 20. One of them is 19. Twenty is oldest.  
7 He's -- he junior at the Art Center, and one of them is --  
8 younger is Cal-State Fullerton. He's a freshman. And  
9 that's it.

10 THE COURT: And you haven't served on a jury  
11 before?

12 PROSPECTIVE JUROR: No.

13 THE COURT: All right. Thank you.

14 PROSPECTIVE JUROR: Hi. My name is Trina Palter.  
15 I live in Anaheim. I am a VP of finance and operations for  
16 Cantor Fitzgerald.

17 I'm single. I have four kids, ages 17, 14, 11 and  
18 nine. And they are all in school.

19 And I've never served on a jury.

20 THE COURT: Thank you.

21 PROSPECTIVE JUROR: Domine Solesbee.  
22 Anaheim Hills. I work for a family auto shop. I do HR and  
23 finance. My husband does the same. He works for the same  
24 company with his family.

25 I have five children: 23, unemployed; 25, works

10:46:00 1 in a paving company; 27, homemaker; 29 -- I'm trying to  
2 think -- homemaker and 32, homemaker. I'm sorry. Is that  
3 five kids?

4 (Laughter.)

10:46:22 5 PROSPECTIVE JUROR: I also lost my mind.

6 I have served on a jury. I cannot recall whether  
7 it was civil or criminal, and it was dismissed during  
8 deliberation.

9 THE COURT: All right. Thank you.

10:46:32 10 PROSPECTIVE JUROR: My name is Baha Dean. I live  
11 in Anaheim. I'm a psychology student at Cal-State  
12 Fullerton.

13 I'm not employed. I don't have any children. Not  
14 married. And I've never served on a jury.

10:46:45 15 THE COURT: Thank you.

16 And we'll take that down to Ms. Spiezia.

17 PROSPECTIVE JUROR: Hi. My name is Susan Spiezia.  
18 I live in Irvine.

19 I was a flight attendant many years ago. That's  
10:47:01 20 why I'm so nervous, talking to all these people. I stayed  
21 home --

22 THE COURT: It's like a public speaking  
23 engagement.

24 PROSPECTIVE JUROR: That's why I never liked it.

10:47:07 25 I stayed home and raised three children.

10:47:09 1 My husband is an attorney and we own a real estate  
2 company. My daughter is 29. She lives in Chicago. She's  
3 an attorney with Gordon and Rees. I have a 28-year-old son  
4 who's in private equity and a 26-year-old son who works for  
10:47:21 5 CBRE Commercial Real Estate in Newport Beach.

6 And I never served on a jury. I made it up to the  
7 box a few times, but I never got further than that.

8 THE COURT: Thank you.

9 PROSPECTIVE JUROR: Hi. My name is Robert Huang.  
10:47:33 10 I live in Irvine. I'm a freelance software developer.

11 My wife was a mortgage loan processor for  
12 Wind Point, but she recently quit.

13 We have one child. She's six months old.

14 And I've never served.

10:47:53 15 THE COURT: Thank you.

16 PROSPECTIVE JUROR: My name is Sebastian Zapart. I  
17 live in Mission Viejo. I'm a pharmacist, and I work for  
18 Laguna Drug.

19 My wife is also a pharmacist. She works for  
10:48:04 20 Albertsons inside the Sav-on.

21 I have two children: Six and two. They don't  
22 work, obviously.

23 I have served on a jury. It was for a criminal  
24 case. A verdict was reached. And the case was about a  
10:48:19 25 gentleman who was abusing his girlfriend -- allegedly



10:48:26 1 abusing his girlfriend, but a verdict was reached.

2 THE COURT: All right. Thank you.

3 PROSPECTIVE JUROR: My name is Gerardo Rivera. I  
4 live in Brea. I work at a call center in Santa Ana, and I  
10:48:38 5 also work at 24 Hour Fitness.

6 I'm not married. No children and never served.

7 THE COURT: All right. Thank you.

8 PROSPECTIVE JUROR: Hi. My name is Elizabeth  
9 Corona, and I live in the City of Anaheim.

10:48:52 10 My occupation is the County of Orange with  
11 nutrition services, WIC. I'm a store clerk.

12 I have two children. He's 19, almost 20, and my  
13 daughter is 18. And my daughter is up in UC Santa Barbara  
14 and my son is -- tire service occupation.

10:49:20 15 And, no, I never served on a jury.

16 THE COURT: Thank you.

17 PROSPECTIVE JUROR: Hi. My name is Richard  
18 Lagorio. I live in Fullerton. I work as a graphic  
19 designer.

10:49:31 20 I am single. I have no children. And I've never  
21 been on a jury before.

22 THE COURT: Thank you.

23 PROSPECTIVE JUROR: My name is Kylie Filipek. I  
24 live in Tustin. I'm currently unoccupied. I'm a student.

10:49:51 25 I have no children. Single. And I've never served on a

10:49:54 1 jury.

2 THE COURT: Thank you.

3 PROSPECTIVE JUROR: Hi. My name is Jasmine. I  
4 currently live in Irvine. I'm currently an intern  
10:50:02 5 pharmacist at Kaiser Permanente and an incoming third-year  
6 doctor pharmacy student at USC.

7 My fiancé, he's a Ph.D. student at the  
8 Beckman Laser Institute of UC Irvine.

9 I have no children. And I've never served on a  
10:50:25 10 jury.

11 THE COURT: Thank you.

12 PROSPECTIVE JUROR: Hi. My name is Jean Nguyen.  
13 I living in Santa Ana. I work for South Coast Nail Supply.

14 My husband work for the National Oilwell Varco.

10:50:43 15 And I have one daughter, 17 years old. And I have  
16 never served on a jury.

17 THE COURT: Thank you.

18 PROSPECTIVE JUROR: My name is Mariana Tudor.

19 I'm living in Garden Grove. I'm working at UCI  
10:50:59 20 Medical Center.

21 My husband is doing construction. We have no  
22 children. And I've never served on a jury.

23 THE COURT: Thank you.

24 PROSPECTIVE JUROR: My name is Viviana Kim. I  
10:51:17 25 live in Buena Park. I'm primarily a stay-at-home mom, but I

10:51:21 1 used to work in visual effects.

2 My husband is a math professor at Mount San  
3 Antonio College.

4 We have one son who is five years old.

10:51:29 5 I served on two criminal cases: One was for  
6 sexual assault and one's for domestic violence. And we  
7 returned verdicts on both.

8 THE COURT: Thank you.

9 PROSPECTIVE JUROR: My name is Elizabeth Van  
10:51:38 10 Hoogmoed, and I live in Yorba Linda. I consider myself  
11 retired after 30 years of raising children.

12 My husband just recently retired from the beverage  
13 industry.

14 I have two children. The oldest is 27, and she is  
10:51:57 15 a resource specialist in special education. My son is 24.  
16 He lives in Colorado and works at a brewery and a  
17 restaurant.

18 I was on a jury many years ago. It was a criminal  
19 case -- shoplifting -- and we found a verdict.

10:52:17 20 THE COURT: Thank you.

21 PROSPECTIVE JUROR: Hi. My name is Tzee Lin.

22 Just recently retired. Used to work in the IT  
23 industry. I'm divorced.

24 One daughter, 27 years old. She's a new  
10:52:37 25 mother/housewife. And never been a juror.

10:52:44 1 THE COURT: All right. Thank you.

2 PROSPECTIVE JUROR: Hello. My name is Carlos  
3 Ortigoza. I live in Yorba Linda, California. I'm a  
4 business owner.

10:52:54 5 My wife works alongside me. I do the operations.  
6 She does all the payments and payroll stuff.

7 We have three beautiful kids: One is 32. She's a  
8 mother. My son is 30. He works for a real estate company  
9 out of Pasadena called Lands Advisor. My daughter works for  
10:53:11 10 the Forest Service as an environmentalist.

11 I served in two criminal juries before, and both  
12 times we reached a verdict.

13 THE COURT: Thank you.

14 PROSPECTIVE JUROR: Hello. My name is Elizabeth  
10:53:23 15 Halcomb. I live in Laguna Hills, and I am a self-employed  
16 private piano instructor. And I work for my dad, who owns  
17 his own carpet and upholstery cleaning business. I'm an  
18 office administrator for him.

19 And I'm also employed by Red Hill Lutheran Church  
10:53:44 20 as an assistant choral director for their children's choir.  
21 And my fiancé works for his family's business at Pinpoint  
22 Pest Control, in Oceanside.

23 I do not have any children. And I have never  
24 served on a jury.

10:54:00 25 THE COURT: Thank you.

10:54:02 1 PROSPECTIVE JUROR: My name is Gino Estacio. I  
2 live in Irvine. I work as a project manager. My wife works  
3 as a loan processor. We have no children.

4 And I have served in a civil case. It was about  
10:54:17 5 personal injury, and the jury was able to reach a verdict.

6 THE COURT: Thank you.

7 PROSPECTIVE JUROR: My name is Elizabeth Kim. I  
8 live in Irvine. I was a manager of a computer store. My  
9 husband is business owner. I have two children, 19 and 16,  
10:54:36 10 and one of them is in college. And I never served as jury  
11 [sic].

12 THE COURT: Thank you.

13 PROSPECTIVE JUROR: My name is Julia Silvey. I'm  
14 from Aliso Viejo. I work as a writing tutor at Loyola  
10:54:49 15 Marymount University, and I'm also a performer at  
16 Disneyland.

17 I'm not married, and I don't have any children,  
18 and I've never been on a jury before.

19 THE COURT: Thank you.

10:55:01 20 PROSPECTIVE JUROR: My name is Jeff Cook. I live  
21 in San Clemente. I own a real estate consulting company,  
22 and my wife owns a digital marketing company.

23 We have five children: Seventeen, 15, 10, nine  
24 and six. And I have never served on a jury.

10:55:23 25 THE COURT: Thank you.

10:55:24 1 PROSPECTIVE JUROR: Hello. My name is  
2 Kathryn Yarnal. I live in Costa Mesa, California. I'm a  
3 family law attorney employed by Hughes & Hughes.

4 My husband is a computer consultant for McAfee  
10:55:39 5 Security.

6 I have two children. They are ages three and one.  
7 I have never served on a jury.

8 THE COURT: Thank you.

9 PROSPECTIVE JUROR: Hi. My name is Teri Roach  
10:55:52 10 Braley, and I live in Dana Point, California. My occupation  
11 is, I'm self-employed. I'm a pet sitter and a nanny for a  
12 three-and-a-half-year old.

13 Let's see. I am divorced. I have two children:  
14 One is 28 and the other one is 24. The 28-year-old is  
10:56:12 15 self-employed. 24-year-old is a bookkeeping [sic] for a  
16 construction company.

17 Let's see. And I've never served on a jury.

18 PROSPECTIVE JUROR: My name is Amada Almase. I  
19 live in the City of Orange. I'm a physician in private  
10:56:31 20 practice. My significant other is a contractor.

21 I have a 39-year-old daughter. She is -- she  
22 works as -- she's a poet. And I have never served on a  
23 jury.

24 THE COURT: Thank you.

10:56:48 25 All right. We've gone through everyone. Now,

10:56:52 1 what we're going to do is, I'm going to allow the attorneys  
2 to ask some follow-up questions, based on what we've already  
3 discussed and any others that they might have to ask, giving  
4 each side no more than 15 minutes.

10:57:08 5 When that is done, we will at that point take a  
6 break and, hopefully, we'll be able to come back before  
7 lunch and have a jury, so -- but no guarantees. It may take  
8 us going through lunch, but we will give that a try.

9 So let's begin, Mr. Powell.

10:57:34 10 MR. POWELL: Your Honor, I'm not confined to the  
11 podium, am I?

12 THE COURT: Yes, you are.

13 MR. POWELL: Hello, again.

14 You may see me wince from time to time. I got a  
10:57:50 15 little back thing going on myself, but I'm fine.

16 I wanted to start with asking Mr. Zola -- it  
17 sounds like that was a pretty emotional time having charges  
18 leveled against you. And the Court has inquired, but it's  
19 kind of part of our job to follow up and ask a few things  
10:58:11 20 that -- the mere fact that there are possibly facts in this  
21 case related to that makes you incapable of seeing what is  
22 the real question before you. In other words, are you so  
23 clouded by that experience that you're not going to be  
24 able -- I know your background. It sounds like you're a  
10:58:33 25 terribly smart man -- to differentiate what you went through

10:58:37 1 from what is really -- what you're being asked to rule about  
2 in this case?

3 PROSPECTIVE JUROR: One of the facts that was  
4 presented in the summary was that one side felt that the  
10:58:51 5 mother was influencing the children to say things that made  
6 the case stronger for that side.

7 I had a similar situation where my ex was making,  
8 kind of -- quite frankly, I felt, manipulating the children  
9 to do things and to say things. That was very, very  
10:59:18 10 painful. And, generally, I'm a very calm and objective  
11 person, but I know when I -- that really raised in me an  
12 emotional response. And I was shaken by that. And I  
13 think -- I have to be candid. I think that will affect my  
14 judgment.

10:59:43 15 MR. POWELL: Is that one the reasons early on when  
16 the Court was asking about people who felt that there was a  
17 hardship, is that one of the reasons that you were --

18 PROSPECTIVE JUROR: Yes. I was going to put that  
19 down on the hardship, that particular issue. And when the  
11:00:00 20 Judge asked these questions, I felt -- it would be covered  
21 that way better.

22 MR. POWELL: Okay. Thank you, sir.

23 Next, to Mr. Tapia. I wanted to see if I  
24 understood. Is it okay to ask how old are you?

11:00:16 25 PROSPECTIVE JUROR: 25.



11:00:17 1 MR. POWELL: And you said that you were -- you  
2 actually were just talked with [sic] the social worker  
3 because of some kind of claim when you were like eight?

4 PROSPECTIVE JUROR: Yeah. Basically, they got  
11:00:28 5 sent to our place, because my brother had bruises on his  
6 arm.

7 MR. POWELL: And you remember that to this day?

8 PROSPECTIVE JUROR: Yes.

9 MR. POWELL: Okay. Do you think that that will  
11:00:39 10 affect in any way your ability to hear this case? It has  
11 aspects of that whole CPS system in it.

12 PROSPECTIVE JUROR: I mean -- it's really tough to  
13 say. I mean -- I can kind of relate, I guess, to possibly  
14 some of the circumstances relating to this case.

11:00:59 15 MR. POWELL: Can I ask you this, sir? You weren't  
16 taken from your parents, right?

17 PROSPECTIVE JUROR: My parents I guess, sort of,  
18 told me what to say. So in a way, they kind of manipulated  
19 me a bit.

11:01:14 20 MR. POWELL: Did you end up staying in your own  
21 home?

22 PROSPECTIVE JUROR: Yes.

23 MR. POWELL: So do you think -- it's kind of the  
24 same question I was asking Mr. Zola. And I'm hoping that  
11:01:23 25 I'm pronouncing it correctly.

11:01:23 1 Do you think that that's going to affect your  
2 ability to, you know, sort out what's relevant here, what's  
3 not relevant here because of this experience that you've  
4 had?

11:01:32 5 PROSPECTIVE JUROR: I'd like to think it probably  
6 wouldn't have any bearing.

7 MR. POWELL: Okay. Good. Mr. Courchaine has  
8 been --

9 Am I pronouncing that correctly?

11:01:49 10 PROSPECTIVE JUROR: "Cro-chaine."

11 MR. POWELL: You've been on five juries. I would  
12 almost feel bad asking you to stay, because this doesn't  
13 seem fair and all these people haven't been on any juries.  
14 You sound like my father. He's been on a bazillion.

11:02:04 15 Honestly, does that make you -- you're a big guy.  
16 Talk out loud. Is that going to create any problem for you  
17 in terms of, you know, being able to sit through number six?  
18 And it might be -- I think the judge said up to two weeks,  
19 eight days.

11:02:17 20 PROSPECTIVE JUROR: I want to say it was actually  
21 six, but I can't seem to remember the sixth one, so I only  
22 said five.

23 MR. POWELL: That's how bad it's gotten. Okay.  
24 All right. Well, I thank you for your service. Everything  
11:02:28 25 the judge says about the importance of jurors is quite

11:02:32 1 accurate. People, they need to solve things in less than  
2 fistfights.

3 Ms. Palter, I also wanted to talk to you, because  
4 I saw a couple of emotional responses along the way there.  
11:02:45 5 And, again, I'm really just getting for my own, wanting to  
6 ask you myself: Do you think after these experiences you've  
7 been through, taking on two children and a guardianship,  
8 going through the lovely field of flowers that analogizes  
9 family law court, that you're going to be able to sit here?

11:03:04 10 And mostly what I want to know is not whether you can get  
11 through it. What you've done already shows you're a strong  
12 woman, but is that going to cause you any problem  
13 differentiating what matters from what doesn't matter  
14 because of your own personal experience?

11:03:20 15 PROSPECTIVE JUROR: Yes -- I mean, I know what  
16 matters. I can get through it. It's the difficulty of  
17 getting through it. I mean, I can do that. I would lean  
18 towards the side of the children.

19 MR. POWELL: You were leaning towards?

11:03:33 20 PROSPECTIVE JUROR: The side of the children,  
21 because I do know what happens. I do know the Orangewood  
22 situation, going through the courts, getting them -- them  
23 being taken away, myself having four kids of my own going  
24 through the court system, the hardship of the divorce, all  
11:03:49 25 that stuff. I've been in that situation, so I know. And

11:03:52 1 that's why I kind of lean towards a little bit of the -- I  
2 mean, I can also set aside my emotions, but at the same time  
3 I still feel like I would still lean towards the children.

4 MR. POWELL: Okay. So what you've said,  
11:04:03 5 Ms. Palter, is -- what I want to reiterate in terms of my  
6 question to any and all of you, because this is the most  
7 important thing of everything that's been said. The judge  
8 asked, you know, can you follow the legal instructions that  
9 she's going to give you?

11:04:18 10 Like she said, she's going to continue to wear the  
11 robe. At some point, maybe more than once, she's going to  
12 talk about law. You are the fact people. That's the law  
13 person. And she's going to convey that to you. And one of  
14 the most important things is, can you honestly say I'm going  
11:04:37 15 to do what you ask me to do, Judge? I'm going to be able to  
16 put out of my mind my personal experience with the  
17 guardianship, my personal experience with having allegations  
18 made against me, social worker coming to talk to me, my  
19 personal experience working with children with autism.

11:04:54 20 Am I going to be able to do all those things?

21 PROSPECTIVE JUROR: I don't think so.

22 THE COURT: And you don't think you can?

23 PROSPECTIVE JUROR: I --

24 MR. POWELL: You think you're going to be --

11:05:00 25 PROSPECTIVE JUROR: I think that I --

MR. POWELL: So we've learned something there.

And Ms. -- is it "Gergis" --

PROSPECTIVE JUROR: Gergis.

MR. POWELL: Gergis. How long have you worked with autistic children?

PROSPECTIVE JUROR: About four months.

MR. POWELL: Four months. Oh! Did you have education in that field before that?

PROSPECTIVE JUROR: No. Speech therapy.

MR. POWELL: Okay. So this is kind of a new job for you?

PROSPECTIVE JUROR: Yes.

SPEAKER2: Okay. Do you think that your brief, albeit, experience working with autistic children will cause you any sympathies or biases that you can't see through to get to the heart of the matter?

PROSPECTIVE JUROR: No.

MR. POWELL: And, Mr. Abbott, you related not even your own -- not even your own custody battle, if you will. You related, I believe, a stepbrother?

PROSPECTIVE JUROR: Correct.

MR. POWELL: Is that right?

PROSPECTIVE JUROR: Yes.

MR. POWELL: Even being like not in the center of whatever that storm was, however bad that storm was, was

1 just the experience of hearing your stepbrother's side of it  
2 or what you witnessed, something that's going to affect your  
3 ability to sort out again what matters in this case from  
4 what doesn't matter?

5 PROSPECTIVE JUROR: I don't believe so.

6 MR. POWELL: Okay. Just like nobody else  
7 indicated, *Hey, I can't follow the Judge's instructions*, you  
8 can do that as well.

9 PROSPECTIVE JUROR: I can.

10 MR. POWELL: All right. Other than that I just  
11 wanted to thank Mr. Hanke's son service as a Marine, and  
12 thank you all.

13 THE COURT: All right. Let me turn to the  
14 defendant, Mr. Watkins.

15 MR. WATKINS: Thank you, Your Honor.

16 Good morning, folks. Are we having fun yet?

17 This is an awkward time in the trial. This is the  
18 only time that counsel will get to talk directly with you  
19 from, say, let's say, this afternoon on. We're not going to  
20 talk to you. It would be improper to do so. Even to the  
21 extent of, if I see you in the elevator, I may not speak,  
22 because that could be misconstrued by somebody down the  
23 hall.

24 Do you all understand that? This is not the way  
25 we live our lives, normally. You're not -- you're going to

11:07:28 1 be asked to defer judging anything until all the evidence is  
2 in. That means sitting here day in and day out. Do you  
3 think you'll be able to do that, all of you?

4 Now, my wife sat on a jury. And when she walked  
11:07:43 5 in the house, the first question that I asked her was -- and  
6 I started, but I know better and I caught myself. You go  
7 home tonight, you're going to be asked what kind of case  
8 you're on.

9 You're going to be told by Her Honor that you  
11:07:56 10 cannot discuss the case at all. In some homes that's going  
11 to be more difficult than others. Does anybody really have  
12 a serious reservation whether they're going to be able to go  
13 the next two weeks without letting their family know what  
14 they're doing all day long? Anybody?

11:08:13 15 I know it's tough. In my house, I don't know if I  
16 can make it or not. Same goes with jumping on line and  
17 looking up terms, anything like -- you're not allowed to do  
18 that. And the reason for that is -- so that everybody knows  
19 that this case is decided, based upon the evidence presented  
11:08:33 20 in this courtroom and that all of the jurors, whoever it may  
21 be, all of the jurors hear and see the same evidence.

22 Anybody going to have difficulty with that  
23 instruction? Because now is the time to speak -- this is  
24 the only time we get a chance -- both Mr. Powell and I and  
11:08:53 25 our clients, all we want is a fair-minded jury that will be

11:08:58 1 able to follow the law and apply the law to the facts as you  
2 find them. Everybody understand that?

3 Mr. Zola, let me ask you -- this situation that  
4 you had, how long ago was it?

11:09:17 5 PROSPECTIVE JUROR: It was about 40 years ago --  
6 45 years ago.

7 MR. WATKINS: All right. And it's still fresh in  
8 your mind?

9 PROSPECTIVE JUROR: Yes.

11:09:25 10 MR. WATKINS: Painful, I take it.

11 PROSPECTIVE JUROR: Yes.

12 MR. WATKINS: Is it still painful for you to think  
13 back on those accusations?

14 When you think back on the dispute, it was a  
11:09:36 15 dispute, correct?

16 PROSPECTIVE JUROR: Today, I have excellent  
17 rapport with all my children. It's -- and there was no  
18 lasting damage done to me; however, as I explained to the  
19 other questions, it does bring -- I tend to lean -- I  
11:09:54 20 understand how a father in a situation could be -- could be  
21 accused and victimized by -- by the wife -- the mother,  
22 because she wanted to have a stronger case.

23 MR. WATKINS: Let me ask you this: As you sit --  
24 you're a bright man. You're an articulate man. As you sit  
11:10:19 25 here, you know both sides are asking you, Mr. Zola, to look



11:10:23 1 inside your heart. You know -- I couldn't stand here and  
2 ask you enough questions to know you as well as you do.  
3 That's not -- I'm not smart enough and Her Honor wouldn't  
4 give me enough time. So you know how you feel. And you're  
11:10:39 5 going to be asked to put any of that aside, because that has  
6 nothing to do with this case, and then decide who has been  
7 able to prove what to you.

8 Do you think you'd be able to do that?

9 PROSPECTIVE JUROR: I don't know.

11:10:56 10 MR. WATKINS: Well -- and you don't know in part  
11 because you haven't heard any of the evidence. Is that fair  
12 to say?

13 PROSPECTIVE JUROR: Yes.

14 MR. WATKINS: Would you give it your best shot?

11:11:05 15 PROSPECTIVE JUROR: If I were selected and asked,  
16 I would give it my best shot.

17 MR. WATKINS: All right. And you would bring all  
18 your intelligence to bear on trying to be fair and impartial  
19 to these folks in this courtroom, right?

11:11:21 20 PROSPECTIVE JUROR: Yes. Yes.

21 MR. WATKINS: All right. Miss -- Mr. Tapia. This  
22 contact -- I take it you had some contact with social  
23 workers when you were younger?

24 PROSPECTIVE JUROR: Yes.

11:11:37 25 MR. WATKINS: And how long ago was that?

11:11:40 1 PROSPECTIVE JUROR: I was about seven or eight at  
2 the time.

3 MR. WATKINS: So that would be -- you're not too  
4 old. How old are you now?

11:11:47 5 PROSPECTIVE JUROR: 25.

6 MR. WATKINS: Okay. I'm going to ask you the same  
7 kinds of questions I asked your neighbor there, Mr. Zola:  
8 Knowing you as you know you, do you think that you will be  
9 able to follow the Court's instructions and put those  
11:12:06 10 emotions, painful as they may be, aside and decide this case  
11 based upon what you hear in this courtroom?

12 PROSPECTIVE JUROR: I think I could, yes.

13 MR. WATKINS: Is there anybody in the panel,  
14 anyone, based on what they've heard, wants to serve on this  
11:12:24 15 jury?

16 That's the right answer. This is an intrusion on  
17 your time. It's an intrusion on your schedules. We know  
18 that. We thank you for that. Both sides do. The Court  
19 does. But if anyone has an abiding interest in sitting on  
11:12:44 20 this jury, I'd like to talk to them just to find out how we  
21 could spread the word. Anybody at all?

22 Okay. Mr. Tapia -- I'm sorry.

23 Mr. Tapia, one other question: I wasn't quite  
24 clear on what you're doing. Your employment.

11:13:09 25 PROSPECTIVE JUROR: Food stamp eligibility

11:13:12 1 technician.

2 MR. WATKINS: In that connection, do you ever  
3 review log sheets for social workers or anything -- you know  
4 what I'm talking about?

11:13:23 5 PROSPECTIVE JUROR: No.

6 MR. WATKINS: No, okay. Then, it's probably --  
7 it's probable that you haven't reviewed them.

8 Okay. That's all I have for you. Thank you very  
9 much.

11:13:33 10 Ms. Palter. You knew I was going to come back to  
11 you, didn't you?

12 PROSPECTIVE JUROR: I was hoping you wouldn't.

13 MR. WATKINS: You made a comment to Mr. Powell  
14 that you think you're leaning towards the kids.

11:13:46 15 PROSPECTIVE JUROR: Yes.

16 MR. WATKINS: Is that because you -- that's your  
17 predisposition. When you wake up in the morning that you're  
18 kind of -- what's it's based on?

19 PROSPECTIVE JUROR: The experience that I had with  
11:13:59 20 the social worker that came and pulled my sisters away. It  
21 wasn't for the right reasons. But I'm glad they ended up  
22 with me, but I don't think it was fair.

23 MR. WATKINS: This is a question for all of you,  
24 but hang on to your mike, Ms. Palter. How many of you have  
11:14:19 25 strong feelings, one way or the other, about social workers

11:14:23 1 and the work they do?

2 No one. How many of you have strong feelings  
3 about the notion that the Government at times has to intrude  
4 on a family for the protection of children?

11:14:42 5 Ms. Palter.

6 Yes, ma'am. Ms. McCann, is it?

7 PROSPECTIVE JUROR: Only in my role with my former  
8 employer where we had to follow any of the court orders and,  
9 of course, the safety of the children are our responsibility  
11:15:05 10 while they are in school and sometimes out of school.

11 MR. WATKINS: Now, were there times when the Court  
12 made orders that you disagreed with, but you felt you had to  
13 go forward with anyway?

14 PROSPECTIVE JUROR: No, I wasn't that personally  
11:15:22 15 involved. Just what the order said. Whether or not you  
16 released the child or not.

17 MR. WATKINS: So your job -- did I hear you  
18 mention that you're also partly in risk management?

19 PROSPECTIVE JUROR: I oversaw that department.

11:15:36 20 MR. WATKINS: Your job, was it partly to make sure  
21 that the court orders were followed?

22 PROSPECTIVE JUROR: Yes.

23 MR. WATKINS: And that's what you instructed  
24 people who reported to you, that they must follow the court  
11:15:47 25 order?

11:15:48 1 PROSPECTIVE JUROR: Most of the school principals,  
2 I helped them interpret the order when there was a question  
3 as to whether or not they were to release that child during  
4 schooltime.

11:15:58 5 MR. WATKINS: Is there anyone in the panel that  
6 has been negatively impacted by a court order that they  
7 thought was very unfair or wrong? Anybody?

8 Ms. Palter?

9 PROSPECTIVE JUROR: No, it's actually different.  
11:16:19 10 When I was younger.

11 MR. WATKINS: Coming back.

12 PROSPECTIVE JUROR: I did -- my dad had full  
13 custody of us later on. But before this, the judge actually  
14 gave us [sic] full custody to my mother, which was an  
11:16:31 15 abusive household, and never followed up on it. CPS came  
16 often, but it was never looked into. We had to lie. And,  
17 finally, it came to where she didn't care and gave us to our  
18 father. So it would have been negative, if she just didn't  
19 give up, but the Court didn't look into it.

11:16:51 20 MR. WATKINS: The situation was remedied by your  
21 mother actually just voluntarily sending you and your  
22 siblings to your father?

23 PROSPECTIVE JUROR: Yes.

24 MR. WATKINS: Okay. Now that's a complicated  
11:17:00 25 thing that you've gone through, and I can understand your

11:17:07 1 feelings about that. But let me ask you: Having been  
2 through all that you've been through and come out the other  
3 end, do you think that you'd be able to sit and give these  
4 folks -- both sides -- a fair shake on the evidence and the  
11:17:29 5 law as Her Honor gives it to you?

6 PROSPECTIVE JUROR: I could try. It would be  
7 hard, but I can try.

8 MR. WATKINS: Being a juror is hard. At the end  
9 of the day, it is. Trust me, it is. If you're selected to  
11:17:44 10 be on this jury -- all of you -- it's hard work, and it's  
11 difficult, because you don't know how important it is to  
12 these people.

13 You're going to give it your best shot?

14 PROSPECTIVE JUROR: I can try.

11:17:57 15 MR. WATKINS: All right. Or as you sit here, do  
16 you think, if I or the parties in this case -- if I was  
17 Mr. Watkins' client, I don't think I would want Ms. Palter  
18 sitting in judgment of me.

19 Do you know what I'm asking you?

11:18:13 20 PROSPECTIVE JUROR: No, I don't think I would want  
21 me in here.

22 MR. WATKINS: Well, you know, I appreciate your  
23 honesty, and everyone does. That's what we're here trying  
24 to do.

11:18:23 25 Okay. Let me ask you a few other questions for

11:18:29 1 the group. I think once, somebody has been a foster parent.

2 Okay. Mr. Zola. Anything about that experience  
3 dealing with a bureaucracy that you have to deal with?  
4 Anything like that that has caused you heartache? Distress?  
11:18:53 5 Anger?

6 PROSPECTIVE JUROR: I don't believe so. We  
7 interacted with social -- at social services and social  
8 workers on a regular basis. And it went very, very well, I  
9 felt.

11:19:11 10 MR. WATKINS: And is this -- Orange County social  
11 workers that you dealt --

12 PROSPECTIVE JUROR: No. It was Howard County,  
13 Maryland.

14 MR. WATKINS: So that experience, you don't think  
11:19:22 15 is going to color your work in this case if you're selected?

16 PROSPECTIVE JUROR: No. No, it wouldn't.

17 MR. WATKINS: All right. Has anyone else been a  
18 foster parent?

19 Ma'am, tell us about that.

11:19:40 20 PROSPECTIVE JUROR: I was foster parent to my  
21 cousin's child for a year.

22 MR. WATKINS: For how long?

23 PROSPECTIVE JUROR: A year. One year. A whole  
24 year.

11:19:48 25 MR. WATKINS: Are you licensed?

11:19:51 1 PROSPECTIVE JUROR: No, I was a relative. Given  
2 relative. I was called in.

3 MR. INGOLS: So you don't have any connection to  
4 the social services agency, or anything like?

11:20:01 5 PROSPECTIVE JUROR: No.

6 MR. WATKINS: How is it going for you?

7 PROSPECTIVE JUROR: Well, my sister took him over.

8 It was too rough for me, because I was single parent with  
9 two older kids. And he had a -- the little boy has a lot  
11:20:14 10 of -- a lot of history. A lot of psychology, psychiatric.

11 I was just taken away from work too much, so I wasn't able  
12 to handle his behavior.

13 MR. WATKINS: Anything about that experience  
14 knowing what little you know about this case that it's going  
11:20:29 15 to stand in the way of you being a fair and impartial here?

16 PROSPECTIVE JUROR: No.

17 THE COURT: You have about another minute or so.

18 MR. WATKINS: I'm sorry?

19 THE COURT: No, I said you have about another  
11:20:43 20 minute or so.

21 MR. WATKINS: Oh, okay, Your Honor. I'm sorry. I  
22 lost track of time.

23 How many of you have ever had to judge credibility  
24 of another person? Not in the day-to-day business, but  
11:20:58 25 something where you had to make a call? Is this person



11:21:01 1 telling the truth or not?

2 Okay. Let me see Mr. Zola, Ms. McCann. Anybody  
3 else?

4 THE COURT: You have hands in the back.

11:21:17 5 MR. WATKINS: All right. For your folks, you're  
6 going to be asked to do that here in this case. Is that  
7 going to cause you difficulty in being fair and impartial in  
8 this case, your prior experience in that regard?

9 Mr. Zola.

11:21:42 10 PROSPECTIVE JUROR: I have to say that in my  
11 answers to the other questions, there is one particular  
12 situation that will affect my ability to make a credible --

13 MR. WATKINS: And that's the one you've already  
14 discussed.

11:21:58 15 Do you believe that you'll be able to bring your  
16 skills in this case and judge the evidence fairly?

17 THE COURT: I think he has been asked that  
18 question enough now.

19 MR. WATKINS: Okay. Thank you very much,  
11:22:09 20 Your Honor. Thanks, ladies and gentlemen.

21 THE COURT: All right. So now, ladies and  
22 gentlemen, what we're going to do is give you a break. And  
23 then, after the -- and I have all the hardship papers.  
24 We're going to address some issues outside the presence of  
11:22:28 25 the jury. If you've given me a hardship paper, you may want

11:22:32 1 to remain outside the door so that if we need to reach you,  
2 if I have any questions, I can pull you in to ask you those  
3 questions about your hardship request.

4 Keep in mind the admonition that I give you  
11:22:47 5 earlier that you're not to discuss this case with each  
6 other, or anyone else, or allow anyone to discuss it with  
7 you while you're out there.

8 You're not to do any research, use your phone or  
9 any other device to learn anything about the case or  
11:23:01 10 communicate about the case in any way.

11 We're going to take a break until 11:45 and then,  
12 we're going to come back. We'll be working during the  
13 break, so we hope to accomplish some things.

14 Is there anyone who has a form that has not given  
11:23:18 15 it to me?

16 All right. We do have one -- oh, we have two.  
17 Okay.

18 All right. And I'm going to stay on the bench.

19 Please keep in mind -- well, I'm not sure you'll  
11:23:33 20 be seated where you are seated now when you come back.

21 We'll let you know.

22 We'll be in recess.

23 (Pause.)

24 THE CLERK: He has not filled out his form, yet.

11:24:53 25 Go ahead and step outside into the hallway, sir,

11:24:57 1 and I'll come and get your form from you.

2 (Pause.)

3 (The following proceedings were had outside the  
4 presence of the jury:)

11:25:15 5 THE COURT: Okay. Now, what we'll begin with is  
6 challenges for cause. I do have hardship forms up here. I  
7 will give them to you to review. It's my determination on a  
8 hardship, but you can let me know. So --

9 Well, let me at least tell you who they are first  
11:25:37 10 and the nature of them and my tentative ruling. There's one  
11 person outside, Juror No. -- I believe it's -- 13, Mr. Lee,  
12 who has a form and didn't fill it out. I believe he told my  
13 CRD that he's also having trouble hearing, but he's sitting  
14 right in the front, right here. So we'll see what his form  
11:26:03 15 says.

16 The first one is from Juror No. 8. I'm just going  
17 to briefly go over these with you instead of handing them  
18 out. He says he has a financial hardship. Lives paycheck  
19 to paycheck. He has -- he's not going to be able to pay the  
11:26:20 20 rent. He has a 17-year-old he's solely responsible for, and  
21 he's asking to have service deferred.

22 My inclination is to grant that.

23 The same is true with Juror No. 20, Mr. Gerardo  
24 Rivera. He's the one who says he has two jobs, and he  
11:26:39 25 doesn't have -- he says even the two jobs don't pay enough

11:26:43 1 to make his rent, if he loses eight days of work, so I'm  
2 inclined to grant that as well.

3 The next one I have is from -- oh, Juror No. 7  
4 just wrote, *I have a back problem*. And so I would need to  
11:27:02 5 bring her in to see whether she's just telling me she has a  
6 back problem or whether there's something more than that.  
7 That is Ms. Nguyen who's in the back row here. Juror No.  
8 22, Mr. Lagorio, in addition to the statements he made when  
9 he was being questioned, he said that he's the sole provider  
11:27:36 10 of his household. He's in extreme financial burden and  
11 lives paycheck to paycheck. I think his household is just  
12 him, though. I don't think he indicated having any  
13 dependents or anyone else. I may be wrong on that. And  
14 then, number two, he reiterated what he said when asked,  
11:27:52 15 which is, *I'm under the assumption that this person has been*  
16 *put in this position for a reason and is guilty of the*  
17 *offense*. I don't think he even necessarily knows who. *I*  
18 *will not be able to provide a fair shake in the outcome of*  
19 *this case*.

11:28:09 20 So I think the not getting paid and the not being  
21 able to provide a fair shake may be somewhat related, but  
22 it's not something that we can always ferret out. So on  
23 that one, I'll leave it to the parties to see if they  
24 have -- I may be inclined to dismiss him, but I will give  
11:28:31 25 you an opportunity to be heard, if you have any objections

11:28:34 1 to that.

2 The next one I have -- these are jurors that are a  
3 little bit further back.

4 (Pause.)

11:28:51 5 THE COURT: There are -- okay. So I just received  
6 from Juror No. 13, Mr. Lee. He says, *Hearing around*  
7 *60 percent good for me. I am sorry.*

8 And there may be a language issue as well?

9 THE CLERK: He says that he is not understanding  
11:29:06 10 100 percent.

11 THE COURT: I had a feeling that might be the  
12 case, but he was answering all of our questions. They were  
13 somewhat fundamental, but oftentimes that is the best  
14 indicator. But he didn't fill out his form when everybody  
11:29:23 15 else filled it out. It's either a lack of hearing and a  
16 lack of a understanding. And it may be difficult for us to  
17 tell which is which, really, at this point or maybe even for  
18 him to tell which is which, so I would be inclined to grant  
19 that request, or that excuse.

11:29:39 20 Then we have Juror No. 25, Ms. Chi T. Nguyen. I  
21 work -- I'm just reading: *I work for the small company from*  
22 *now to the end of this year. I have only three vacation*  
23 *days and no pay for jury duty. Beside I have to drop off*  
24 *and pick up my kid every -- my kid. I can't read the next*  
11:30:03 25 *word. I have to pay some -- something. If I ask someone to*

11:30:09 1 *help me with this.* Obviously, she has to pay someone to do  
2 that. *Without working my --*

3 She has a serious financial problem. I'm  
4 paraphrasing it. It's not quite exactly there. I'm  
11:30:22 5 inclined to grant that as well. On an eight-day trial, I'm  
6 a little more lenient than I am on a three- or four-day  
7 trial, because it's more significant.

8 Ms. Elizabeth Kim says, *I give a ride to school*  
9 *and back for my son and his friends. Eight days is too much*  
11:30:39 10 *to find rides for both to them.*

11 I'm not inclined to grant that, but she's Juror  
12 No. 33. So I'm not sure we'll get there, but I'm not  
13 inclined to grant that one.

14 This one I may have to have this person answer  
11:30:51 15 questions, because this is -- I think it's Mr. Lin,  
16 Juror No. 29. He seemed completely fluent, as far as I  
17 could tell, but he wrote: *I seem to have difficulty*  
18 *understand the case.*

19 When he stood up and spoke, he was -- I didn't  
11:31:09 20 hear any problems at all, so I don't know if he means he has  
21 an issue with the substance of the case, or he has an issue  
22 with language, so I would bring him in. Again, I'm not sure  
23 it will matter.

24 But then No. 37, which again is awfully far in the  
11:31:28 25 back of the -- at the end of the list, but it's Ms. Braley

11:31:32 1 who says she has a learning disability, ADHD, *a hard time*  
2 *remembering things, a hard time staying still. It hurts to*  
3 *sit for a long period of time.*

4 Yet, with all that, she takes care of a  
11:31:47 5 three-and-a-half-year old whose mother is disabled and has  
6 to have her help daily. So go figure. I don't know whether  
7 she -- I wonder if the mother knows that if she has a hard  
8 time remembering things.

9 THE CLERK: I'm sorry, Your Honor. What number  
11:32:03 10 was that?

11 THE COURT: This is No. 37, Ms. Braley. I don't  
12 have any strong -- I mean, what -- I don't think we're going  
13 to get to 37, so I think I'm going to set this aside. If we  
14 for some reason get there, then we will address it. We'll  
11:32:20 15 do the same with 29.

16 And the others, I am granting, with the exception  
17 that I don't know about the back problem, which is Juror  
18 No. 7. I think I'm going to actually have her come in so  
19 that we know whether she's saying she can't sit or what that  
11:32:41 20 means.

21 So if you can ask Juror No. 7, Ms. Phuong-Chi  
22 Nguyen, to come in.

23 MR. POWELL: She, of course, has my upmost  
24 sympathies. Mr. Watkins has a preference, but I've got some  
11:33:07 25 Advil.

11:33:09 1 Can I ask Your Honor, since no one else is here,  
2 when you exclude witnesses, that doesn't mean you exclude  
3 actor witnesses, right? Actor witnesses?

4 THE COURT: No.

11:33:17 5 MR. POWELL: Thank you.

6 THE COURT: They have to say what is on the paper.

7 MR. POWELL: I only one or two anyway.

8 *(Ms. Phuong-Chi Nguyen enters courtroom.)*

9 THE COURT: All right. And you can just go to the  
11:34:22 10 lectern, ma'am. Just to the lectern.

11 Right here. Yes. So we can hear you. You wrote  
12 on your questionnaire that you have a back problem.

13 PROSPECTIVE JUROR: Yes, My [sic] Honor.

14 THE COURT: All right. Would you be able to -- do  
11:34:38 15 you stand periodically? Or what would help, if you were a  
16 juror?

17 PROSPECTIVE JUROR: The chair this morning, I have  
18 no problem in this chair, and standing up is fine. Because  
19 when you asked the question, I just wanted you to be aware  
11:34:54 20 of that.

21 THE COURT: Okay. I just wanted to make sure that  
22 if we could accommodate you by having, you know, this chair  
23 which is -- usually, it's pretty comfortable, or allowing  
24 you to stand. As long as we know why you're standing, that  
11:35:08 25 it's your back, then it's not a problem.



11:35:10 1 So you would be able sit during a jury trial or  
2 participate by sitting and standing?

3 PROSPECTIVE JUROR: Yes, My [sic] Honor.

4 THE COURT: Okay. All right. Thank you. You can  
11:35:20 5 go back out into the hallway. I just wanted to make sure  
6 that I understood the nature of the back problem.

7 PROSPECTIVE JUROR: Yes. Thank you.

8 THE COURT: All right. Thank you.

9 All right. So to the extent that it matters,  
11:35:41 10 those people that I have granted the hardship excuse to are  
11 Juror No. 8, No. 13, No. 20, 22 and 25. And I've not gotten  
12 to anyone past that at this point, because I don't know that  
13 we will get there.

14 So now I will hear hard -- challenges for cause.

11:36:14 15 And so, we can begin with the plaintiff. Are  
16 there any challenges for cause by the plaintiff?

17 MR. POWELL: I think that Juror No. 6, Mr. Zola, I  
18 think his statements alone provide cause.

19 THE COURT: All right. Anything from the defense  
11:36:36 20 on Mr. Zola?

21 MR. WATKINS: Both questions are at length -- I  
22 questioned him at length. And I think at the end of his  
23 questioning, it was pretty clear that, yeah, he has had some  
24 experiences, but he's going to try to be fair and impartial  
11:36:52 25 in this case. And that's really all we can ask him.

11:36:55 1 THE COURT: No, I think that he made it clear that  
2 he's not going to be able to be fair and impartial. Only  
3 when left with a choice of you're going to be -- if you're  
4 going to be sitting on this jury will you try, he answered  
11:37:08 5 "Yes." That's not sufficient to find that he would be  
6 unbiased. And everything he said up until then made it  
7 clear that he did not think he could be. And so, the  
8 challenge of cause is sustained.

9 And any other challenges for cause from the  
11:37:31 10 plaintiff?

11 MR. POWELL: No, Your Honor.

12 THE COURT: Any from the defendant?

13 MR. POWELL: Yes, Your Honor. Ms. Palter.

14 THE COURT: Anything from the defense -- from the  
11:37:41 15 plaintiff on that?

16 MR. POWELL: I think she's a strong woman and she  
17 indicated she could do this. I could understand if the  
18 Court felt that cause was appropriate as well. I wouldn't  
19 say it's clear-cut.

11:37:55 20 THE COURT: Oh, I would say it is. For both of  
21 these, it is. For Ms. Palter, she would be stricken. I  
22 will sustain the challenge for cause.

23 All right. And any others?

24 MR. POWELL: No. Did you -- you let Mr. Rivera  
11:38:13 25 out on hardship, correct?

11:38:14 1 THE COURT: I did. And also Mr. Lagorio.

2 If there is nothing else, then we're going to turn  
3 to the peremptories. And you do those as blind challenges,  
4 so each of you get three peremptories.

11:38:37 5 Was there anything else, Mr. Watkins?

6 MR. WATKINS: I just want to make sure that I am  
7 on the same -- I got Post-its all over the place.

8 THE COURT: Yes, I will tell you that in the box  
9 right now, looking at the 16 who are there, the ones who  
11:38:51 10 have been stricken already, either based on cause challenges  
11 or hardship, are: No. 6, No. 8, No. 13 and No. 14.

12 And in the first row outside of the box, No. 20  
13 and No. 22 have been relieved, based on hardship and No. 25  
14 in the second row.

11:39:22 15 All right. So the first eight unstruck jurors  
16 will be the jurors in your case. So you should exercise  
17 your three peremptories, accordingly. You do that  
18 separately. I'm going to step off the bench. I'm going to  
19 give you five minutes to go over that. And then, we will --  
11:39:43 20 once that's done, we'll have our -- the composition of our  
21 jury. We'll bring everyone in, swear in the jurors and let  
22 the rest of the folks go before lunch.

23 MR. POWELL: Can we agree on what the first eight  
24 are?

11:39:56 25 THE COURT: Who they are right now before any

11:39:58 1 peremptories?

2 Well, that was what I was just doing. I just told  
3 you who was struck from those.

4 So it would be Jurors No. 1 through 5, Juror No.  
11:40:07 5 7, Juror No. 9 and 10.

6 MR. POWELL: Thank you. I wanted to, I guess,  
7 hear it from your voice as well.

8 THE COURT: All right. There you go. Like I  
9 said, I'll step off the bench. I'll give you about five  
11:40:28 10 minutes and then you-all can let me know when you're ready.

11 THE CLERK: All rise.

12 *(Recess taken from 11:40 a.m. to 11:45 a.m.)*

13 *(The following proceedings were had outside the*  
14 *presence of the jury:)*

11:45:57 15 THE COURT: All right. My understanding is that  
16 we may have an issue with one of the prospective jurors.

17 MR. WATKINS: Yes, Your Honor.

18 I was informed that Marcia Veecken recognized  
19 Mr. Tapia's name as being, I guess, employed in her  
11:46:20 20 department. I don't know if there's any personal contact.  
21 She's not sure there is.

22 THE COURT: When you say "she's not sure," let me  
23 just ask.

24 Ms. Vreecken, is it?

11:46:40 25 MS. VREEKEN: Yes.

11:46:41 1 THE COURT: Have you ever met Mr. Tapia before?

2 MS. VREEKEN: I don't recall.

3 THE COURT: So you don't work with him on any kind  
4 of regular basis or daily basis, or anything like that?

11:46:52 5 MS. VREEKEN: No.

6 THE COURT: And do you work, like, in the same  
7 location, or anything along those lines?

8 MS. VREEKEN: I've been in all four regions, and  
9 his -- familiar with his job as eligibility technician. If  
11:47:08 10 he has a client who says that they are involved in domestic  
11 abuse, they are required to make a referral to our  
12 department.

13 THE COURT: Right. And I think that was what he  
14 was saying earlier when he was sitting up there, that he --  
11:47:20 15 he's made a referral before.

16 Okay. One moment. Wait. We have somebody coming  
17 in.

18 I'm sorry. We're not ready yet. We'll come out  
19 and get you.

11:47:32 20 (Pause.)

21 THE COURT: All right. Just a couple minutes  
22 then.

23 Okay. Is there any issues by the attorneys?

24 MR. WATKINS: No, Your Honor. I have one other --  
11:47:50 25 I don't think it's going to be a problem.

11:47:53 1 THE COURT: And then, let me turn to the  
2 plaintiff.

3 MR. POWELL: With regards to the Tapia situation?

4 THE COURT: Yes.

11:47:58 5 MR. POWELL: That seems a little close to home for  
6 a case that is going to run for eight days or more.

7 THE COURT: Well, I'm not sure that there's any --  
8 I mean, I wanted to hear from you. But having considered  
9 it, she doesn't know him. She recognizes the department he  
11:48:17 10 works at. They have -- I'm not sure that this creates  
11 any -- any issue or that it makes him unqualified as a  
12 juror, so I think I'm going to allow him to stay based on  
13 what I've heard so far.

14 Is there anything else? You said you had  
11:48:40 15 something else, Mr. Watkins.

16 MR. WATKINS: Yes. Juror No. 36, I believe her  
17 employer is Hughes & Hughes. I don't think we're going to  
18 get that far, but Hughes & Hughes was -- represented  
19 Ms. Fogarty-Hardwick in this case.

11:48:57 20 THE COURT: All right. Well, I don't think we're  
21 going to get there. I can -- I can -- unlike Mr. Tapia, who  
22 is part of our eight, so I don't think we're going to get  
23 there. I think I would -- I mean, I think that -- I'm not  
24 sure if that's enough. I would question her on it, but  
11:49:16 25 let's first see what your challenges are and see if it even

11:49:20 1 makes it an issue for us.

2 All right. So we promised the jury that they  
3 would come in about quarter 'til. It's 10 'til. And I  
4 think I've given you enough time, so I'm going to collect  
11:49:34 5 your three peremptory challenges.

6 (Pause.)

7 THE COURT: Okay. We're collecting your three  
8 now.

9 (Pause.)

11:51:43 10 THE COURT: All right. So based on the  
11 challenges, our first eight jurors are the jurors in this  
12 case; that is, Jurors 1 through 5, Juror No. 7 and Juror No.  
13 9 and Juror No. 10.

14 (Pause.)

11:52:30 15 THE COURT: At this point -- actually, I don't  
16 think it's necessary, since none of them came into play.

17 (Pause.)

18 THE COURT: All right. We're going to bring in  
19 the jury. We'll tell all of the jurors they can sit  
11:53:13 20 anywhere right now behind the railing and they'll bring up  
21 those eight.

22 MR. POWELL: Lucky souls.

23 THE COURT: Exactly. They just don't know it.

24 (Pause.)

11:53:24 25 *(The following proceedings were had in open court*

11:53:24 1           *in the presence of the prospective jury:)*

2           THE COURT: Please go ahead and have a seat  
3 anywhere behind the railing. You don't need to be where you  
4 were before, but do stay on that side of the courtroom.

11:53:48 5           That's best.

6           And as I just indicated, everybody can have a seat  
7 behind the railing. You don't need to go back up into the  
8 box now. Again, just find a place behind the railing.  
9 Anywhere will do. Anywhere behind the railing is fine.

11:54:42 10          Just go ahead and have a seat on the same side as the other  
11 jurors, please. All on this side over here (*indicating*). I  
12 shouldn't say "anywhere" I guess, should I?

13           All right. And you may all be seated.

14           All right. Ladies and gentlemen, as I indicated  
11:55:01 15 earlier, the manner in which we select a jury may be  
16 somewhat different than what you have experienced before.  
17 There was a method to the madness when we had you play the  
18 game of musical chairs. We -- as I promised, I thought we  
19 might be able to resolve this before noon. We have selected  
11:55:19 20 a jury. And so, if your name is called, it means that you  
21 have been selected as a juror in the case. We are selecting  
22 eight jurors in this case. And if you are called, then  
23 you'll be seated in the back row and the front row. Four in  
24 the back and four in the front. We're going to skip those  
11:55:43 25 two chairs on the end. I like to seat the eight jurors sort



11:55:47 1 of in the middle, so we'll skip the two chairs on the end in  
2 the back, and you'll start with the third chair. We'll go  
3 four people over, and then the fifth person will be in the  
4 third chair in the front row.

11:55:59 5 And if my CRD could call the names, please.

6 THE CLERK: Juror No. 1, Judith Creel.

7 Juror No. 2, Jourdana Gergis.

8 Juror No. 3, Sue McCann.

9 Juror No. 4, Jeffrey Abbott.

11:56:46 10 Juror No. 5, Jesse Tapia.

11 Juror No. 6, Phuong-Chi Nguyen.

12 Juror No. 7, Arte Figueroa, and

13 Juror No. 8, Patrick Courchaine.

14 THE COURT: No. 7, Mr. Courchaine.

11:57:35 15 And now that you've been seated, we are going to  
16 ask that you stand to be sworn in as jurors in the case.

17 THE CLERK: Please raise your right hand.

18 *(Jury sworn.)*

19 THE JURY: I do.

11:57:59 20 THE CLERK: Thank you.

21 You may be seated.

22 THE COURT: All right. Ladies and gentlemen, I  
23 don't want those of you who were in the very back to think  
24 that you were unnecessary, because oftentimes we do end up  
11:58:08 25 all the way back there in terms of our jury selection. It

11:58:12 1 just depends on each case. But I do want to thank you for  
2 responding to the summons when you received it in the mail.  
3 It requires us to have a pool of ready, willing and able  
4 potential jurors. And, again, on behalf of the Central  
11:58:32 5 District and the Federal District Court, I want to thank  
6 you. You are now excused from service. And if you need  
7 anything from Jury Services, you may go back down there to  
8 receive that. Otherwise, you are free to leave at this  
9 time.

11:58:47 10 Thank you.

11 *(Prospective jury pool excused.)*

12 *(The following proceedings were had in open court*  
13 *in the presence of the jury:)*

14 THE COURT: All right. And you may be seated.

11:59:34 15 And I must say we couldn't have planned that  
16 better if we had tried, because look at the time on the  
17 wall. It is the time for you to take the noon recess.

18 So let me just tell you a few things before you  
19 come back; and then, we'll let you go. We're going to take  
11:59:49 20 you back to where the jury room is so that you can see where  
21 you're going to be, and you can take the notebook that is  
22 sitting on your chair, and you can put it back there so you  
23 have it to go when you come back.

24 When you do come back, the first thing I'm going  
12:00:04 25 to do is give you some preliminary instructions. You'll be

12:00:07 1 getting instructions throughout the case -- a lot of them at  
2 the end, but you will be given some at the beginning, so I  
3 do that next. After that, you'll hear the opening  
4 statements from each side. And then, we'll begin with the  
12:00:23 5 testimony of the witnesses.

6 I want to make sure that now that you've been  
7 selected as jurors that you're also very comfortable. So I  
8 know that we have at least two people on our jury who have  
9 bad backs, and so -- and they both happen to be seated in  
12:00:41 10 the front. Maybe more than two. So if, at any point, you  
11 need to stand, maybe -- and I'm not sure. Maybe we should  
12 switch you right away so that you can be in the back so that  
13 when you stand you're not in front of someone, or you can  
14 just step over to the side. As long as we know what you're  
12:01:00 15 doing, no one is going to panic. Every once in a while,  
16 it's surprising when somebody just stands up in the middle  
17 of a trial. But feel free to let us know, and you can move  
18 over to the side, that sort of thing.

19 The temperature in here varies, you'll find,  
12:01:13 20 throughout the day and throughout the week, so you may want  
21 to have a little something to wear over and then to take off  
22 when it gets hot in here. Also, if, at any point, you can't  
23 see what's being projected up on one of the screens -- and  
24 we'll have a screen here and then that screen that's in the  
12:01:30 25 corner now will be moved out at some point. You'll probably

12:01:32 1 be either viewing documents or video on screen as well. If  
2 you can't see it, let us know; if you can't hear, let us  
3 know. If you would like to bring in something to drink  
4 after lunch or again tomorrow morning, feel free to do that.

12:01:50 5 Again, I know it's difficult to just sit there all day and  
6 not have access to that. So all we ask is that you have a  
7 lid on whatever you bring so that if it tips, it's covered  
8 and we don't have to, you know, clean the carpet afterwards.

9 All right. So that's it for now. We're going to  
12:02:07 10 be in recess until 1:30. I do ask that you try to get back  
11 here by 1:20 so you can be gathered up, brought back into  
12 the jury room and then brought back out here by 1:30 so that  
13 we can be ready to go, because we're going to keep this  
14 thing rolling and keep ourselves on track.

12:02:27 15 Okay. And we'll be in recess.

16 THE CLERK: All rise.

17 *(Recess taken from 12:02 p.m. to 1:30 p.m.)*

18 *(The following proceedings were had outside the*  
19 *presence of the jury:)*

01:25:10 20 THE COURT: All right. You can bring the jury in.

21 *(The following proceedings were had in open court*  
22 *in the presence of the jury:)*

23 THE CLERK: You may be seated.

24 Good afternoon, ladies and gentlemen. Welcome  
01:32:47 25 back from lunch. As I indicated before you left, I'm going

01:32:50 1 to be giving you some instructions now, and then you will  
2 hear from the attorneys for opening statements. At the  
3 conclusion of the case when you go back to deliberate, you  
4 will receive these instructions in written form, so I just  
01:33:05 5 tell you that in advance so that you're not worried about  
6 whether you have to memorize all of this or write it down.

7 Members of the jury, you are now the jury in this  
8 case. It is my duty to instruct you on the law. It is your  
9 duty to find the facts from all the evidence in the case.

01:33:25 10 To those facts, you will apply the law as I give it to you.  
11 You must follow the law as give it to you whether you agree  
12 with it or not. And you must not be influenced by any  
13 personal likes or dislikes, opinions, prejudices or  
14 sympathy. That means that you must decide the case solely  
01:33:43 15 on the evidence before you. You will recall that you took  
16 an oath to do so. At the end of the trial I will give you  
17 final instructions, and it is the final instructions that  
18 will govern your duties. Please do not read into these  
19 instructions or anything I may say or do that I have an  
01:34:01 20 opinion regarding the evidence or what your verdict should  
21 be.

22 To help you follow the evidence, I will give you a  
23 brief summary of the positions of the parties. Plaintiff  
24 asserts that her removal from her mother's custody on  
01:34:15 25 February 17th, 2000 and continued separation of the

01:34:19 1 plaintiff from her mother on March 31st, 2000 were each  
2 unconstitutional actions because each was caused by  
3 defendants' presenting false statements and evidence and/or  
4 suppressing or omitting exculpatory evidence in a proceeding  
01:34:36 5 involving plaintiff in the juvenile dependency court of the  
6 County of Orange. The plaintiff has the burden of proving  
7 these claims. Defendants deny those claims and also contend  
8 that plaintiff was removed due to her mother's wrongful  
9 conduct. Defendants further contend that any damages  
01:34:56 10 plaintiff seeks for being separated from her mother should  
11 be limited because for the majority of time they were  
12 separated, it was because plaintiff wanted to be in her  
13 father's custody. The defendants have the burden of proof  
14 on this affirmative defense that plaintiff's damages should  
01:35:12 15 be limited. The plaintiff denies defendants' affirmative  
16 defenses.

17 When a party has the burden of proving any claim  
18 or affirmative defense by a preponderance of the evidence,  
19 it means you must be persuaded by the evidence that the  
01:35:28 20 claim or affirmative defense is more probably true than not  
21 true. You should base your decision on all of the evidence  
22 regardless of which party presented it. And you should  
23 decide the case as to each defendant separately unless  
24 otherwise stated in the instructions to all parties.

01:35:49 25 The evidence you are to consider in deciding what

01:35:52 1 the facts are consists of: One, the sworn testimony of any  
2 witness;

3 Two, the exhibits that are admitted into evidence;  
4 Three, any facts to which lawyers have agreed; and  
01:36:07 5 Four, any facts that may instruct you to accept as  
6 proved.

7 In reaching your verdict, you may consider only  
8 the testimony and exhibits received into evidence. Certain  
9 things are not evidence and you may not consider them in  
01:36:23 10 deciding what the facts are. I will list them for you:

11 One, arguments and statements by lawyers are not  
12 evidence. The lawyers are not witnesses. What they may say  
13 in their opening statements, closing arguments and at other  
14 times is intended to help you interpret the evidence, but it  
01:36:43 15 is not evidence. If the facts as you remember them differ  
16 from the way the lawyers have stated them, your memory of  
17 them controls;

18 Two, questions and objections by lawyers are not  
19 evidence. Attorneys have a duty to their clients to object  
01:37:00 20 when they believe a question is improper under the rules of  
21 evidence. You should not be influenced by the objection or  
22 by the Court's ruling on it;

23 Three, testimony that is excluded, or stricken, or  
24 that you are instructed to disregard is not evidence and  
01:37:19 25 must not be considered. In addition, some evidence may be

01:37:23 1 received only for a limited purpose. When I instruct you to  
2 consider certain evidence only for a limited purpose, you  
3 must do so and may not consider that received for any other  
4 purpose;

01:37:34 5 Four, anything you may see or hear when the court  
6 is not in session is not evidence. You are to decide the  
7 case solely on the evidence received at the trial.

8 Again, some evidence may be admitted only for a  
9 limited purpose and when I instruct you that an item of  
01:37:55 10 evidence has been admitted only for a limited purpose, you  
11 must consider it only for that limited purpose and not for  
12 any other purpose.

13 Evidence may be direct or circumstantial. Direct  
14 evidence is direct proof of a fact such as testimony by a  
01:38:10 15 witness about what that witness personally saw, or heard, or  
16 did. Circumstantial evidence is proof of one of more facts  
17 from which you could find another fact. You should consider  
18 both kinds of evidence. The law makes no distinction

19 between the weight to be given to either direct or  
01:38:29 20 circumstantial evidence. It is for you to decide how much  
21 weight to give to any evidence. By way of an example, if  
22 you wake up in the morning and see that the sidewalk is wet,  
23 you may find from that fact that it rained during the night.  
24 However, other evidence such as a turned-on garden hose may  
01:38:50 25 provide a different explanation for the presence of water on



01:38:52 1 the sidewalk. Therefore, before you decide that a fact has  
2 been proved by circumstantial evidence, you must consider  
3 all the evidence in the light of reason, experience, and  
4 common sense.

01:39:06 5 There are rules of evidence that control what can  
6 be received into evidence. When a lawyer asks a question or  
7 offers an exhibit into evidence and a lawyer on the other  
8 side thinks that it is not permitted by the rules of  
9 evidence, that lawyer may object. If I overrule the

01:39:23 10 objection, then the question may be answered or the exhibit  
11 received. If I sustain the objection, the question cannot  
12 be answered and the exhibit cannot be received. Whenever I  
13 sustain an objection to a question, you must ignore the  
14 question and must not guess what the answer might have been.

01:39:43 15 Sometimes I may order that evidence be stricken from the  
16 record and that you disregard or ignore that evidence. That  
17 means that when you are deciding the case, you must not  
18 consider the stricken evidence for any purpose.

01:39:59 19 In deciding the facts in this case, you may have  
20 to decide which testimony to believe and which testimony not  
21 to believe. You may believe everything a witness says, or  
22 part of it, or none of it. In considering the testimony of  
23 any witness, you may take into account:

01:40:19 24 One, the opportunity and ability of the witness to  
25 see, or hear, or know the things testified to;

01:40:21 1 Two, the witness' memory;  
2 Three, the witness' manner while testifying;  
3 Four, the witness' interest in the outcome of the  
4 case, if any;

01:40:32 5 Five, the witness' bias or prejudice, if any;

6 Six, whether other evidence contradicted the  
7 witness' testimony;

8 Seven, the reasonableness of the witness'  
9 testimony in light of all the evidence; and

01:40:46 10 Eight, any other factors that bear on  
11 believability.

12 Sometimes a witness may say something that is not  
13 consistent with something else he or she said. Sometimes  
14 different witnesses will give different versions of what  
01:41:00 15 happened. People often forget things or make mistakes in  
16 what they remember. Also, two people may see the same event  
17 but remember it differently. You may consider these  
18 differences but do not decide that testimony is untrue just  
19 because it differs from other evidence. However, if you

01:41:18 20 decide that a witness has deliberately testified  
21 untruthfully about something important, you may choose not  
22 to believe anything that witness said. On the other hand,  
23 if you think the witness testified untruthfully about some  
24 things but told the truth about others, you may accept the  
01:41:36 25 part you think is true and ignore the rest. The weight of

01:41:38 1 the evidence as to a fact does not necessarily depend on the  
2 number of witnesses who testify. What is important is how  
3 believable the witnesses were and how much weight you think  
4 their testimony deserves.

01:41:52 5 I will now say a few words about your conduct as  
6 jurors: First, keep an open mind throughout the trial and  
7 do not decide what the verdict should be until you and your  
8 fellow jurors have completed your deliberations at the end  
9 of the case. Second, because you must decide this case

01:42:09 10 based only on the evidence received in the case and on my  
11 instructions as to the law that applies, you must not be  
12 exposed to any other information about the case or to the  
13 issues it involves during the course of your jury duty.

14 Thus, until the end of the case or unless I tell you

01:42:25 15 otherwise, do not communicate with anyone in any way and do  
16 not let anyone else communicate with you in any way about  
17 the merits of the case or with anything to do with it. This  
18 includes discussing the case in person, in writing, by phone  
19 or electronic means via e-mail, text messaging, or any

01:42:46 20 Internet chat room, blog, website, or application, including  
21 but not limited to Facebook, YouTube, Twitter, Instagram,  
22 Linked-In, Snapchat, or any other form of social media.

23 This applies to communicating with your fellow jurors until

24 I give you the case for deliberation and it applies to

01:43:06 25 communicating with everyone else, including your family

01:43:09 1 members, your employer, the media or press and the people  
2 involved in the trial, although you may notify your family  
3 and your employer that you have been seated as a juror in  
4 this case and how long you expect the trial to last. But if  
01:43:23 5 you are asked or approached in any way about your jury  
6 service or anything about this case, you must respond that  
7 you've been ordered not to discuss the matter and report the  
8 contact to the Court.

9 Because you will receive all the evidence and  
01:43:39 10 legal instruction you properly may consider to return a  
11 verdict, do not read, watch, or listen to any news or media  
12 accounts or commentary about the case or anything to do with  
13 it, although I have no information that there will be news  
14 reports about this case. Do not do research such as  
01:43:55 15 consulting dictionaries, searching the Internet or using  
16 other reference materials and do not make any investigation  
17 or in any other way try to learn about the case on your own.  
18 Do not visit or view anyplace discussed in this case and do  
19 not use Internet programs or other devices to search for or  
01:44:13 20 view any place discussed during the trial. Also, do not do  
21 any research about the case, the law or the people involved,  
22 including the parties, the witnesses, or the lawyers, until  
23 you've been excused as jurors. If you happen to read or  
24 hear anything touching on this case in the media, turn away  
01:44:31 25 and report it to me as soon as possible. These rules

01:44:34 1 protect each party's right to have this case decided only on  
2 evidence that has been presented here in court.

3 Witnesses here in court take an oath to tell the  
4 truth, and the accuracy of their testimony is tested through  
01:44:49 5 the trial process. If you do any research or investigation  
6 outside the courtroom or gain any information through  
7 improper communications, then your verdict may be influenced  
8 by inaccurate, incomplete, or misleading information that  
9 has been not been tested by the trial process.

01:45:05 10 Each of the parties is entitled to a fair trial by  
11 an impartial jury. And if you decide the case based on  
12 information not presented in court, you will have denied the  
13 parties a fair trial.

14 Remember you've taken an oath to follow the rules  
01:45:19 15 and it is very important that you follow these rules. A  
16 juror who violates these restrictions jeopardizes the  
17 fairness of the proceeding and a mistrial could result that  
18 would require the entire trial process to start over. If  
19 any juror is exposed to any outside information, please  
01:45:36 20 notify the Court immediately.

21 I urge you to pay close attention to the trial  
22 testimony as it is given. During deliberations, you will  
23 not have a transcript of the trial testimony. If you wish,  
24 you may take notes to help you remember the evidence. If  
01:45:55 25 you do take notes, please keep them to yourself until you go

01:45:59 1 to the jury room to decide the case. Do not let note-taking  
2 distract you. When you leave, your notes should be left in  
3 the jury room. No one will read your notes. Whether or not  
4 you take notes, you should rely on your own memory of the  
01:46:12 5 evidence. Notes are only to assist your memory. You should  
6 not be overly influenced by your notes or those of other  
7 jurors.

8 From time to time during the trial, it may become  
9 necessary for me to talk with the attorneys out of the  
01:46:27 10 hearing of the jury either by having a conference at the  
11 bench when the jury is present in the courtroom or by  
12 calling a recess. Please understand that while you are  
13 waiting, we are working. The purpose of these conferences  
14 is not to keep relevant information from you but to decide  
01:46:42 15 how certain evidence is to be treated under the rules of  
16 evidence and to avoid confusion and error. Of course, we  
17 will do what we can to keep the number and length of these  
18 conferences to a minimum. I may not always grant an  
19 attorney's request for a conference. Do not consider my  
01:47:00 20 granting or denying a request for a conference as any  
21 indication of my opinion of the case or of what your verdict  
22 should be.

23 Trials proceed in the following way: First, each  
24 side may make an opening statement. An opening statement is  
01:47:14 25 not evidence. It is simply an outline to help you

01:47:17 1 understand what the party expects the evidence will show. A  
2 party is not required to make an opening statement.

3 The plaintiff will then present evidence and  
4 counsel for the defendant may cross-examine. Then, the  
01:47:30 5 defendant may present evidence and counsel for the plaintiff  
6 may cross-examine. After the evidence has been presented, I  
7 will instruct you on the law that applies to the case and  
8 the attorneys will make closing arguments. Now, after that,  
9 you will go to the jury room to deliberate on your verdict.

01:47:49 10 Those are the preliminary instructions. We will  
11 now turn to opening statements and we will begin with the  
12 plaintiff, Mr. Powell.

13 Would you like to stand at this time.

14 I'm just going to let you know that, typically,  
01:48:07 15 attorneys will stand at the lectern whenever they speak,  
16 either opening statement, closing argument, or examination  
17 of a witness.

18 Mr. Powell has indicated that he's having some  
19 problems with his back and in acknowledgment of that, I have  
01:48:20 20 allowed him at times to remain seated in his chair. So at  
21 times, he will be, perhaps, either speaking or questioning  
22 from his chair as opposed to from the lectern, but those are  
23 the only two places. And other than -- other than that,  
24 they will be all from the -- all the attorneys will be from  
01:48:41 25 the lectern.

01:48:42 1 Mr. Powell.

2 MR. POWELL: I may switch back and forth because  
3 neither one of them is great.

4 Okay. Every story has a beginning. You heard the  
01:48:56 5 beginning a moment ago when the Court told you what the  
6 claims were that my client is making. As I described  
7 briefly in the mini-opening, she's telling you that as a  
8 result of lies made to the juvenile court by defendants  
9 Vreeken and Wilkins, she was removed from her mother's care.

01:49:18 10 The evidence will show, which is kind of what  
11 we're supposed to be telling you now, what we think the  
12 evidence is going to show, the evidence will show that from  
13 there she went to a facility known as Orangewood here in  
14 Orange County. She experienced being held down and  
01:49:36 15 inoculated, injected with a needle against her will.  
16 Probably always the case with a six-year-old but without the  
17 comfort for her mother or father, for that matter.

18 But I want to -- and then, again, as I said  
19 earlier -- and I'll go through this in a moment again --  
01:49:53 20 come March -- February 17th, the lies told at that court  
21 proceeding which ends up in the removal. But on March 31st  
22 when there's an opportunity to be truthful with the Court  
23 again and if not return the child to her mother and her  
24 sister, Kendall -- Kendall is along for the ride this whole  
01:50:14 25 time -- then given to the father, if you think that the



01:50:17 1 mother has just made up all of this stuff about sexual abuse  
2 and it's all a big manipulation, but that didn't happen  
3 either. They went into foster care. So -- or they were in  
4 foster care, I think, by that time.

01:50:31 5 But let me point out some very important things.  
6 I want you to hold me to what I tell you the evidence is  
7 going to show. I want you to hold Mr. Watkins to the things  
8 he tells you. And at the end, I want you to measure those  
9 things. See who kept their word. I'm going to recap some  
01:50:59 10 statements from the mini-opening and about what the evidence  
11 will show:

12 You were told mother leveled charges of horrific  
13 abuse, quote, end quote. Publicly announced the abuse  
14 claims. You were told these things. You were told about,  
01:51:22 15 There are reports to the juvenile judge. The evidence will  
16 show that there are reports to the juvenile judge. And the  
17 evidence will show that on February 17th, after whoever's  
18 version you believe of what occurred on February 15th, makes  
19 no sense. Because if Ms. Vreeken claimed that my client  
01:51:50 20 said to the child -- children, *Your father is gonna -- she's*  
21 *trying to take you from your father and put you in foster*  
22 *care, or if you don't visit with your father, you're going*  
23 *to go to a foster home.*

24 If my client -- my client's mother said those  
01:52:04 25 things, you think you'd see that in there pretty bold, the

01:52:09 1 big complaint, but the evidence will show that that's not  
2 the case.

3 You were told in the mini-opening that Kendall  
4 Hardwick was prone to manipulation and that she filed a  
01:52:23 5 lawsuit herself. Those are both true. You won't hear any  
6 dispute there. You were told at the time when she filed the  
7 lawsuit, she was living at her mother's. Other than the  
8 time period that CPS and the acts of Ms. Vreeken and  
9 Ms. Wilkins separated these children from their mother, that  
01:52:49 10 was where they were living, was with their mother. But the  
11 evidence will also show that the things that Kendall  
12 Hardwick said when she was a child to psychologists -- to  
13 her own therapist and to others -- were exactly the things  
14 that she was saying when she ended up in her own lawsuit.

01:53:19 15 In the middle still while in the CPS system  
16 Kendall Hardwick tells her therapist after all this blew up,  
17 she has been moved from her mom, I wish I hadn't said  
18 anything. She took the weight of the world upon herself for  
19 divulging sexual molestation and abuse. But let me stop  
01:53:46 20 myself right there. You heard the claims. Did you hear any  
21 claim that I'm supposed to prove about whether Cary  
22 Hardwick --

23 MR. WATKINS: Objection, Your Honor. Argument.

24 THE COURT: Sustained.

01:53:58 25 Just what the evidence will show, as you've been

01:54:03 1 doing.

2 MR. POWELL: The evidence will show that no one  
3 knows whether that occurred -- any type of molestation  
4 abuse. But the evidence will show that this statement was  
01:54:22 5 absolutely false that you were told in mini-opening: That  
6 Kendall's mother and attorney pressured her to lie. You'll  
7 hear conflicting evidence on that.

8 So now let me take you back through what went on  
9 with this family. Deanna Hardwick, a hardworking woman,  
01:54:48 10 successfully captured Miss California, in late 1970s.  
11 Later, 1989, she marries Mr. Hardwick. And the evidence  
12 will show, he's a handsome devil and their life was good.  
13 It started out good. He was a partner in a restaurant.  
14 Evidence will show he's still a restaurateur to this day.  
01:55:15 15 In fact, he does very well.

16 Let me say this as well: The evidence will show  
17 that my client and her father love each other.

18 But going back to the marriage. When Kendall was  
19 born, she had some type of digestive tract problem and it  
01:55:40 20 led to a large mass being removed from her. I believe her  
21 mother described it as the biggest thing she had ever seen.  
22 Couldn't imagine it came out of a baby that size. And that,  
23 of course, as you can imagine, whether you have children or  
24 not, caused tremendous stress and concern when your child is  
01:56:01 25 ill like that. At that time, as I said, Mr. Hardwick was

01:56:05 1 working with the restaurant. Mother Deanna had a meat  
2 route. It doesn't seem like, maybe, a logical thing, but  
3 that's what she had, a wholesale meat route. And she also  
4 would assist her mother in a dress shop and had dreams at  
01:56:22 5 times there of kind of going into business with her mom and  
6 going into some dressmaking-type activities, but she did  
7 work there. And that was fine. They could handle that  
8 while Kendall was young and before the signs of autism  
9 started to show up, but they did show up. And the evidence  
01:56:43 10 will show you that one of the most poignant moments was when  
11 something fell crashing to the ground and Kendall didn't  
12 flinch. And so when that puzzled the mom, of course,  
13 thinking, hearing must be bad and the test results were, no,  
14 her hearing was fine, she went further and then they found  
01:57:02 15 out that she had the -- basically, it's a form of autism.  
16 And as Mr. Watkins said, the evidence is going to  
17 show you -- she's going to come here. She's going -- I  
18 guess. I don't know -- and possibly testify. So the  
19 evidence will show that she's not debilitated in any real  
01:57:22 20 form. When Preslie came along, the birth went fine. But  
21 now between all the work of running a restaurant, the meat  
22 route, the dress shop, some of the work Mrs. Fogarty --  
23 Fogarty-Hardwick now was able to handle with Preslie  
24 strapped on her chest, you know, doing that kind of work.  
01:57:43 25 But they ended up getting a nanny, and her name was Rosy

01:57:47 1 Reales. It still is. And she, you know, started out kind  
2 of as you might expect. She worked a little bit and then  
3 moved up into full time as life got more and more hectic and  
4 as Kendall's condition became more apparent. And it became  
01:58:04 5 more apparent that children on that autism spectrum need  
6 consistency.

7 The evidence will show that the mother essentially  
8 devoted her time to both the girls and, admittedly, it was  
9 for the reason that Kendall needed the structure. Her days  
01:58:23 10 needed to be structured. Her time needed to be structured.  
11 Deviations from structure would cause anxieties, okay?  
12 Preslie got the benefit of mom being around all the time.  
13 The evidence is going to show you that they had a wonderful  
14 bond, an excellent bond and Kendall, too, until some point  
01:58:44 15 after CPS got involved.

16 In any event, back at a time when Kendall was  
17 four, maybe three and Preslie was like one, the dad started  
18 disappearing. There started being problems. And the  
19 evidence will show that he, kind of, like just stepped away  
01:59:07 20 from the family. At least in the mother's eyes, he didn't  
21 seem to want to participate in those kinds of things. And  
22 she was trying very hard to keep a cohesive family unit even  
23 though there was the stress of running a restaurant, her  
24 working, dealing with the child. What she came to find out  
01:59:23 25 was that he was -- had an alcohol problem and substance

01:59:33 1 abuse problem. She didn't run. She didn't abandon the man.  
2 She helped him go through rehab. He still visited with the  
3 kids while in rehab. It's about a three-week rehab.

4 Other things came to light, though. The addiction  
01:59:55 5 to methamphetamine came up. A sexual addiction that isn't  
6 pretty, that came up. The evidence will show none of those  
7 things mattered to the lies that were told on February 17th  
8 and on March 31st. It doesn't matter. At four in one

9 (verbatim), there's some inappropriate behaviors that mom  
02:00:21 10 witnesses between the two girls and it causes her concerns.  
11 She knows she has a husband who she separated from who has  
12 these issues. Evidence will show that heightens one's  
13 concerns but no one, including Ms. Fogarty-Hardwick, wants  
14 to make a claim that's false that she doesn't know. She  
02:00:44 15 does talk to doctors about it. And the first time that  
16 happens, they say, *Well, you know, it's a little strange*  
17 *behavior, but just keep an eye on him, okay?* And that's  
18 what she does.

19 She files for divorce eventually, and that has to  
02:00:59 20 do with the second time after being declared clean and sober  
21 being found to have drugs in his system. And he gets put on  
22 monitored visitation. Divorce proceedings are going. And  
23 there are these evaluations that go on -- the evaluations  
24 about the parents. He's seeing the children at times, every  
02:01:22 25 three weekends a month -- the first, third and fifth, I

02:01:25 1 believe that's what they call it in family court. In fact,  
2 I know that's what they call it: The first, third and  
3 fifth. So he is seeing the children. He's seeing them  
4 regularly.

02:01:33 5 Is there tension between the parents? Yes. The  
6 evidence will show, again, it's of no consequence to the  
7 dates in question here. So along about November, Kendall,  
8 as you were told in mini-opening, is when she -- that  
9 Mrs. Hardwick was pending a family court proceeding and  
02:02:08 10 laying in -- or with her little girl, Kendall, and Kendall  
11 started telling her mother of just horrible abuse. Horrible  
12 abuse. That's what you were told. The evidence is going to  
13 show you that all that Kendall did at that point was to say  
14 that daddy was touching her down there. That's it. But she  
02:02:29 15 already had a therapist as a result of the family law  
16 proceedings. And mother contacted the therapist. And, of  
17 course, she said, *Bring her in*. So of course she did.

18 And the evidence will show that Kendall reported  
19 inappropriate touching in bed, digital penetration, things  
02:02:54 20 like that, okay? Nothing in the way of outright rape or  
21 things like that. Nothing like that. Supposedly at night,  
22 sneaking in the room. Again, the evidence is going to show  
23 you that none of that matters to the claims, but I know what  
24 you're going to hear.

02:03:10 25 There is a back story, but it isn't the story. So

02:03:15 1 the therapist, not Ms. Fogarty-Hardwick, contacts CPS. That  
2 brings us here today. And they come out -- and, by the way,  
3 the evidence will show, never a claim that Preslie was  
4 abused by anyone, other than maybe the system. It's what  
02:03:41 5 she's here telling you. She was abused by the system but  
6 not that she was abused by her father, or anyone else.

7 And, originally, an agreement is signed that  
8 basically makes the mother not allow Kendall to be dropped  
9 off with anyone and if they want Kendall down at their  
02:03:58 10 offices there at the CPS -- Child Protective Services --  
11 then that's all they need to do is tell them to come down  
12 here. So then starts a series of -- a document called a  
13 "petition" gets filed in juvenile court. Interestingly, it  
14 talks about, you know, the child's -- meaning, Kendall's  
02:04:23 15 statements about molestation, and it throws in that mother  
16 fails to protect. I guess, it's -- according to the  
17 evidence -- what they do. If a child is ever sexually  
18 abused, then the mother fails to protect if it happens  
19 inter-family, but that's just the way things go.

02:04:40 20 So a series of visitations start with the father  
21 that are all monitored and mother is doing her level best to  
22 make all of those happen. But as you might imagine,  
23 Kendall, who the psychologist said was very creditable, she  
24 didn't make that call to CPS on a whim. She said Kendall  
02:05:04 25 seems credible. Her story is consistent. So Kendall is



02:05:08 1 reluctant to go on the visits -- and not every one. Some  
2 visits she was fine; other visits she wasn't.

3 Now the evidence will show some would chalk that  
4 up when she wouldn't go to some level. Some intelligent  
02:05:24 5 people who deal with evaluations of children would say,  
6 *That's kids. Sometimes they don't go. Sometimes they don't*  
7 *want to go. Sometimes you can't get them away from the*  
8 *PlayStation to go visit their father.*

9 MR. WATKINS: Your Honor, argument.

02:05:38 10 THE COURT: You can move on.

11 MR. POWELL: Thank you.

12 Now, her first social worker in the case, first  
13 real one, if you skip the one who came out and signed the  
14 agreement and all that, Ms. Fogarty-Hardwick's social worker  
02:05:48 15 was Rachael Davis. Rachael Davis will tell you  
16 Ms. Fogarty-Hardwick was great. She seemed to care. If  
17 Ms. Fogarty-Hardwick had a question, she would answer it.  
18 When these problems developed with the children not going on  
19 the visit -- again, not so much Preslie. Preslie is pretty  
02:06:10 20 much seen as a -- the evidence would show kind of a  
21 consistent kid throughout until she goes to Orangewood,  
22 but -- so Kendall was having problems and Ms. Davis said --  
23 Ms. Fogarty-Hardwick said, *What do I do so that I'm not the*  
24 *bad guy when the kids won't go on a visit?*

02:06:31 25 Ms. Davis was very clear. You take them to the

02:06:34 1 monitor person -- and there were two or three:

2 Hector Delgadino and Ms. Wilkins over there. She was a  
3 monitor, too. And then if -- you know, if the kids still  
4 have a problem, let that person be the neutral. It was  
02:06:50 5 perfect. The evidence will show that's exactly what you  
6 should do so that the parent isn't put in that middle of  
7 their own child pleading not to go and having to make that  
8 decision, especially when they are being watched by the  
9 Court, watched by CPS.

02:07:04 10 So Rachael Davis and the relationship there was  
11 great. The evidence will show Ms. Fogarty-Hardwick followed  
12 her directions to the tee, right up until she was taken off  
13 the case for no particular nefarious reason, but the  
14 evidence will show that she was. She was switched with  
02:07:25 15 Marcie Vreeken. And the evidence will show that was a  
16 fateful day for the Hardwick family. Ms. Vreeken's first  
17 time actually seeing Ms. Hardwick and her children and Cary  
18 Hardwick, for all that's worth, was when she attended a  
19 visit that Mr. Hardwick went to at the Social Security  
02:07:50 20 offices -- not Social Security -- at the CPS offices. So he  
21 had come for a visit. And the evidence will show he was  
22 there for a typical hour-long visit. They ran 4:00 to 5:00.

23 The mother would bring them. And when she did,  
24 she brought Rosie -- Rosie, who is now like the full-time  
02:08:12 25 nanny. This mom, you know, separated household, she doesn't

02:08:14 1 have a man about the house. She's got Rosie. Rosie is  
2 really good with the kids, really close with the kids. The  
3 evidence will show she had her own little boy, Carlitos, and  
4 they were all there. They had come. They had dropped off  
02:08:26 5 the girls: Preslie and Kendall. They went and visited with  
6 dad, and they went into a room, okay? Down the hall, a  
7 little bit -- ways away.

8 Ms. Vreeken comes in there the end of the meeting.  
9 Then, you're going to hear conflicting evidence. You'll  
02:08:43 10 decide what it shows. She's going to give you evidence  
11 about how it wasn't that long. She thinks the visit ran  
12 late. That's why she was late. Ms. Hardwick is going to  
13 tell you that, you know, the place was shutting down. It  
14 was getting to be around 6:00 o'clock by the time they  
02:08:59 15 come -- any activity returns to her room, and she's starting  
16 to get worried. So she's in a room with Rosie, Carlitos and  
17 herself: Ms. Fogarty-Hardwick and those two.

18 And here comes Preslie, flying in the room crying,  
19 saying that they're going to take her away, that the lady is  
02:09:19 20 telling them that they are going to be taken away and they  
21 are going to have to go into a foster home. And, of course,  
22 Ms. Fogarty-Hardwick is going to be saying, *Who? Who?*

23 She's saying, *Marcie*. Six and a half, articulate,  
24 telling her, *Marcie is doing it*.

02:09:35 25 Ms. Fogarty-Hardwick reacts as anyone might when

02:09:38 1 they believe their children are going to be taken away, she  
2 immediately becomes anxious and starts crying. She's  
3 comforting her child. She's crying. Ms. Reales is crying a  
4 little bit, because she is so close with both Preslie and  
02:09:55 5 Kendall. This is an ugly scene. But Preslie came in there  
6 by herself. Shortly after that comes Ms. Wilkins. And very  
7 shortly after that, here comes Ms. Vreeken, who's now got  
8 Kendall. And the evidence will show Ms. Fogarty looks at  
9 Kendall's face and she's all puffy and swollen, and she's  
02:10:16 10 got tears, okay?

11 Ms. Fogarty-Hardwick looks up and says, *Is it*  
12 *true?* when she sees Ms. Vreeken. *Is it true?*

13 And she says, *Is what true?*

14 *Is it true the kids aren't coming home with me*  
02:10:31 15 *tonight?* And she says, No -- I'm sorry.

16 She says that she had told them, she expressly  
17 tells her that she had told them that if the kids don't  
18 visit with their father, the judge is going to put them in a  
19 home.

02:10:44 20 They just completed a visit with their father. So  
21 you'll determine what the evidence shows as to why anyone  
22 would do that, but that's what happened. That is what  
23 happened.

24 MR. WATKINS: Argument, Your Honor.

02:11:01 25 THE COURT: Overruled.

02:11:03 1 MR. POWELL: Ms. Hardwick -- I'm sorry. Did I say  
2 February 17th? That was February 15th, this visit at the  
3 CPS office that went horribly awry. Ms. Hardwick jumps up  
4 because she's going to throw up, and she runs into the  
02:11:18 5 restroom.

6 Preslie comes toddling along behind her. After a  
7 little bit, Ms. Hardwick goes into the restroom. She throws  
8 up and then she tries to collect herself, figure out, what  
9 is going on? What is happening here, trying to gather her  
02:11:33 10 thoughts. And she -- as she's leaving -- she throws some  
11 water on her face. She goes out the bathroom. Preslie is  
12 trying to come into the bathroom at that time, simply turns  
13 her around and walks back. And she approaches Ms. Vreeken  
14 and asks her, you know, *What do I need to do? You know,*  
02:11:53 15 *what do I need to do? What are your directions?*

16 She's not really sure of the source of this  
17 complaint. *What is it that I need to do for you?*

18 She's gone through an experience with Ms. Davis  
19 where if she wanted direction or Ms. Davis wanted her to do  
02:12:06 20 something a certain way, Great, she'd do it. So her thought  
21 was somehow our wires got crossed. I just met this woman,  
22 but let me -- even in the panic she was in, let me see if I  
23 can't sort this out and see what is going on. And she says  
24 to Ms. Vreeken, you know, *What is expected of me? What is*  
02:12:26 25 *it you expect of me? What do you want me to do?*

02:12:28 1 And she wouldn't say. And Hardwick says it again,  
2 and she wouldn't say. And so Ms. Hardwick gives it one last  
3 shot. And Ms. Vreeken's response is, *What's the matter? Am*  
4 *I not warm and fuzzy enough for you?*

02:12:46 5 So the evidence will show that the impact of  
6 saying something to both these little children and the  
7 mother about how they're going to go to a foster home and  
8 the mom is going to go home to an empty home was lost on  
9 Ms. Vreeken.

02:13:03 10 Next Mr. Hardwick, of course, gives up trying to  
11 get any cooperation and they pack up the girls and they  
12 leave. And I'm truncating it. It's going to be longer when  
13 you hear it starting today. She goes to court two days  
14 later, February 17th and -- Ms. Fogarty-Hardwick. She's  
02:13:27 15 outside the court and here comes her attorney saying --  
16 obviously, upset. Obviously, flustered. In juvenile court,  
17 a lot of times they go in there and this juvenile court  
18 system is, you know, to protect the best interest of the  
19 children and the family. And then, they have these meetings  
02:13:45 20 where the clients aren't there. And by "clients," I mean  
21 the parents and I mean the children. They're not there.  
22 But in any event, this day, her attorney comes out. She's  
23 upset, and Deanna is like, *What's going on?*

24 And they go into the courtroom and the judge comes  
02:13:59 25 out -- I'm sorry. When she goes into the courtroom, the

02:14:02 1 evidence is, Ms. Vreeken and Ms. Wilkins have been called.  
2 So when she goes in, they're not in session, like the judge  
3 sitting up there at the moment. And then Ms. Vreeken comes  
4 and Ms. Wilkins. And the Judge, first words out of his  
02:14:19 5 mouth, pretty much is, *Based on the consultation we've had*  
6 *off the record, I'm initially inclined to remove the*  
7 *children.*

8 So here's another -- second shock wave through  
9 Ms. Hardwick. The evidence will show that they went  
02:14:44 10 ahead -- Ms. Wilkins, Ms. Vreeken -- and maintained the lie,  
11 maintained the lie, and the evidence will show they are  
12 sitting here today prepared to do it again. But there's  
13 more. So with that, the Judge makes an order to go remove  
14 the children forthwith. Right now. It doesn't matter where  
02:15:09 15 they are. Get them. Preslie is at her school, McDonough,  
16 something like that. McGaugh. Kendall is at a therapy  
17 appointment with her grandmother, Marlene Fogarty, who you  
18 will also hear from. And a police officer is called by  
19 Ms. Vreeken and they show up at Preslie's school. And in  
02:15:35 20 the meantime, Ms. Fogarty-Hardwick, wanting to make the  
21 stress level on her children as little as possible, contacts  
22 the grandmother and tells her that she needs to bring  
23 Kendall to the school so that they can take both of her  
24 children.

02:15:51 25 They get to the school and Preslie learns they're

02:15:54 1 trying to take her and she crawls under a table and she is  
2 clutching the table leg, screaming, crying, sobbing because  
3 they are there to take her. They got the police officer.  
4 The evidence will show he's a nice officer but still a  
02:16:16 5 police officer. And, of course, Mrs. Fogarty-Hardwick  
6 wasn't there. The grandmother was. And guess who else came  
7 was -- Marjorie Mitchell, the psychologist, because  
8 Ms. Fogarty-Hardwick, in an effort to ameliorate the trauma  
9 that was definitely about to befall her children, contacted  
02:16:34 10 her. And Ms. Mitchell, in the kindness of her heart,  
11 dropped what she was doing and hustled to that school. So  
12 there they all are trying to pull -- not pull -- I always  
13 try to avoid exaggeration -- trying to get Preslie to come  
14 out from under the table. Eventually, after several  
02:16:56 15 minutes, they are able to cajole her with the promise of ice  
16 cream and the promise that when she does leave, she's going  
17 to leave with her grandma. And they did at least keep that  
18 promise. She did get to leave with her grandma long enough  
19 to go to Orangewood, where, the evidence will show, she was  
02:17:15 20 held down against her will. The evidence will show they had  
21 to bring her sister to try and help to get her to hold still  
22 so they could shoot her with a needle -- give her a shot  
23 with a needle and not shoot her. And that was pretty  
24 traumatic, the evidence will show.

02:17:38 25 So the kids are living in Orangewood. Big



02:17:44 1 facility. The evidence will be presented to you that it's  
2 an almost idyllic park-like setting, I'm sure. The evidence  
3 will be shown to you by myself and the plaintiff that it  
4 wouldn't matter if it was Disneyland.

02:18:02 5 MR. INGOLS: Your Honor, I'm having difficulty  
6 hearing, and it is argument.

7 THE COURT: Overruled on argument. Do try to stay  
8 near a microphone.

9 MR. POWELL: I'm sorry. I don't have much left.

02:18:12 10 As I said, the evidence will show it's no  
11 Disneyland. It was no Disneyland to my client.

12 The evidence will also show an interesting turn of  
13 events. Everything that Ms. Vreeken had her hands in or  
14 Ms. Wilkins had her hand in, after they took the kids in  
02:18:36 15 terms of reporting about visits with dad, were glowing.  
16 They were glowing. And the psychologist, you know, the one  
17 with the license from the State of California, education and  
18 all that, Ms. Mitchell, she saw something completely  
19 different. She saw two children who were suffering.

02:19:06 20 Preslie, who as I said before, the evidence will show in  
21 terms of up to her six years of life at that point, was a  
22 pretty consistent kid, pretty normal, strong-willed,  
23 somewhat quiet. You will hear all that.

24 Now, Preslie Hardwick was acting out in anger.  
02:19:27 25 Lashing out. The evidence will show a six-year-old lash out

02:19:32 1 when they don't understand and that it's very damaging to  
2 them. So Kendall was really, really suffering. Really  
3 decompensating is what the experts call it, what  
4 Ms. Mitchell called it, or any other expert who makes it to  
02:19:50 5 that stand, I submit to you, the evidence, they will call it  
6 that as well. That means, like, they're falling apart.  
7 They're falling apart.

8 And Ms. Mitchell calls Ms. Vreeken, I want to say,  
9 two days before -- you can check me on that as the evidence  
02:20:05 10 comes in -- two days before the March 31st hearing and  
11 leaves her a message and uses these types of words, like  
12 decompensating. She's extremely stressed, okay?

13 Mother -- Ms. Fogarty-Hardwick asks  
14 Ms. Mitchell -- Dr. Mitchell, *How are the kids doing?*  
02:20:26 15 Around about that time.

16 And she tells her, *They're not doing good. This*  
17 *isn't good for them. And the longer they're here, the more*  
18 *damaged they'll be. They are really suffering from the*  
19 *separation* -- caused by the lie in the first place.

02:20:39 20 It's about time for a second lie. The evidence  
21 shows that Ms. Mitchell, at the request of  
22 Ms. Fogarty-Hardwick's attorney in the juvenile matter,  
23 writes a letter to provide an updated status as to the  
24 children. Now, remember, the evidence is going to show over  
02:21:01 25 here all these reports from Wilkins and from Vreeken, from

02:21:05 1 anybody who monitored something for the County of Orange  
2 about suitable visits and then there's this letter from  
3 Marjorie Mitchell. And what does it say?

4 It says what I already told you it said. It says  
02:21:15 5 the kids are decompensating -- I'm sorry. *Kendall is*  
6 *decompensating. Preslie is acting out angrily. They're not*  
7 *doing well.*

8 When the judge hears that from the mother's  
9 attorney, Ms. Fogarty-Hardwick, that he believes there's  
02:21:30 10 going to be a letter -- because he never got confirmation  
11 that the psychologist was ever going to actually write the  
12 letter, but she said she would. And so they stopped the  
13 hearing. And Preslie's grandmother, Ms. Fogarty --  
14 Marlene -- goes over to the SSA office -- that's their  
02:21:49 15 offices. It's right across the plaza -- goes in. And in a  
16 mail box, sitting there since 8:00 a.m. -- 8:03, if you  
17 believe the document fax tag line, is this letter from  
18 Marjorie Mitchell.

19 Now, at this point, Helen Dwojak gets involved.

02:22:07 20 Now -- may I mention about the state issue?

21 THE COURT: Objection?

22 MR. POWELL: So the evidence will --

23 THE COURT: No objection. Yes, you may.

24 MR. POWELL: I don't know if it's right to say,  
02:22:16 25 the evidence will show, but --

MR. WATKINS: I'm having a hard time hearing.

THE COURT: He's at the microphone and so am I.

MR. POWELL: We have a situation here where one of the defendants is a Helen Dwojak. She's a supervisor to Ms. Vreeken. She's passed away. The judge can clarify if she wishes, but under the law you can pursue against the estate. So if you actually read, like, the paper that we filed about this case, it reads: *Preslie Hardwick versus Elaine Wilkins, Marcie Vreeken and the Estate of Helen Dwojak.*

So -- and we have testimony from her in a prior trial, because the evidence will come in that there was -- in addition to -- in a trial by Kendall that she later retracted, this got left out in the mini-opening. She retracted that when she moved in with her father. That's when she canceled that lawsuit. But there was also a lawsuit by Ms. Fogarty-Hardwick. Now, I lost my train of thought. Forgive me, Your Honor.

March 31st. It's a letter. Marlene Fogarty goes to get it. They won't hand it to her, because it's a letter from a doctor to -- you know, about a kid and there's confidentiality laws in juvenile courts that, you know, we don't want the public to know about the privacy of people's affairs in the juvenile court. So the letter -- Helen Dwojak comes down. She gets the letter, and she goes with Marlene Fogarty back over to the court. Then the

02:23:53 1 evidence is going to show that there's a little powwow  
2 around the letter. A little powwow with the letter there.  
3 But guess who's not in the powwow? Ms. Fogarty-Hardwick's  
4 attorney. He's not in the powwow. Ms. Vreeken is there.  
02:24:09 5 Again, she's already had the voicemail message from the  
6 doctor.

7 So this letter, which I just told you about,  
8 Ms. Vreeken on the stand -- he's asked for them to go check  
9 on the letter to see if there's some problem with the girls  
02:24:26 10 in the home -- in the Orangewood home. And sure enough,  
11 they lie. Marcie Vreeken is asked to this effect, *If there*  
12 *was something wrong with the girls, about the status of the*  
13 *girls, surely you would let me know.* I don't think he used  
14 "you." I think he used the "agency." He's talking to  
02:24:52 15 Ms. Vreeken. Ms. Vreeken says, Yes.

16 In other words, I would let you know, but -- and  
17 the evidence here is, I'm not letting you know right now.  
18 And she didn't. The letter shows up later. But there it  
19 was in the courtroom. In the courtroom. Those are the  
02:25:12 20 extent of our claims. Extent of my client's claims. She'll  
21 put on evidence of all of these things through the  
22 witnesses.

23 And I thank you for your time and appreciate your  
24 service.

02:25:32 25 THE COURT: And Mr. Watkins.

MR. WATKINS: Thank you, Your Honor.

Good afternoon, ladies and gentlemen.

My name, again, is Norm Watkins. It's my pleasure to represent Elaine Wilkins and Marcie Vreeken in this case.

And this is the time permitted under the rules for counsel to give you what is known as an opening statement, and what that is and what it is supposed to be and what it's intended to be is an overview of the evidence as an assist to you so that when it comes in -- and sometimes it doesn't always

come in, in order -- you might reflect on what is said and understand how a piece of the puzzle may fit later on. In fact, if you look over there behind the witness box, there's 38 volumes of exhibits. I'm happy to tell you that you're not going to have to read them. But there's 38 volumes of

exhibits. And the reason for that is, this story covers 22 years of nonstop litigation turmoil and domestic lawsuits in divorce and dependency court. And what I'm going to do in this time allotted to me, with your patience, is I'm going to try to walk you through this. And I apologize if it gets a little bit too much in the weeds, but I think you will see as the case unfolds that this may be of an assist to you: A timeline. We're going to work you through the courts that got involved and what happened in the proceedings.

Now, the overview of this is, this is a sad story of what happens when kids are injected into grown-up adult

02:27:44 1 litigation when they shouldn't be. The broad timeline is  
2 Cary and Deanna Fogarty-Hardwick marry in 1989. They have  
3 Kendall in 1990. They have Preslie in 1993. And by 1995,  
4 the marriage has grown toxic. And, yes, there's discussion  
02:28:10 5 of drugs and alcohol and issues, frankly, on both sides, but  
6 divorce papers are filed. The separation occurs and that  
7 couple will never live again together. That's 1995.

8 '95 and '96, they are co-parenting more or less  
9 successfully. I would say more on the less side -- pardon  
02:28:38 10 me. And Mr. Hardwick will testify that he began to get  
11 threats from Mrs. Hardwick that she was going to accuse him  
12 of molesting his kids. And he was very worried about it.  
13 She made good on that in 1996. And there are two  
14 investigations of child abuse in 1996: First, by the  
02:29:13 15 welfare folks. And what is alleged is that -- and this is  
16 coming from Ms. Fogarty-Hardwick -- that the oldest daughter  
17 is making reference to a -- to something called "kiss the  
18 banana" and you're going to hear that phrase throughout.

19 And, by the way, it gives me no pleasure to go  
02:29:37 20 through this family's strife; but, unfortunately, this  
21 lawsuit is tied in with it and there's no other way to do it  
22 and do justice to my clients. So there is an allegation  
23 of -- that she heard this phrase and there's sexual acting  
24 out certainly by Kendall, according to her mother, and she's  
02:30:03 25 worried because this seems to happen when she comes back

02:30:05 1 from a visitation with her father. Now, you may say that's  
2 not a direct allegation of sexual abuse. It is where I come  
3 from. And it was investigated as such.

4 And the social welfare department came and made  
02:30:22 5 impromptu home visits, interviewed the kids at length and  
6 documented that neither child confirmed any abuse by anyone.  
7 And it was deemed unsubstantiated. The -- the allegation of  
8 abuse that ended up in the family law court became the  
9 subject of litigation in that court. And what the courts

02:30:54 10 can do is -- and I mentioned this in my mini-opening -- they  
11 order what we refer to as a 730 investigation or evaluation.  
12 730 evaluation is for the Court. The court appoints an  
13 expert, usually a psychologist, a clinical psychologist, a  
14 neuropsychologist, whatever the Court feels it needs. And  
02:31:21 15 in case, Dr. Thomas Howell was engaged by the Court and the  
16 Court, specifically, said look into the allegations that the  
17 father is acting out sexually with his oldest daughter, who  
18 is now all of six years old and then give me advice on other  
19 aspects of parenting in this troubled family.

02:31:51 20 Dr. Howell is very well-known in the field. He's  
21 very accomplished. And I took his deposition. And he  
22 testified. And we have him under subpoena to testify in  
23 this trial. And he said, *In my experience* -- which he will  
24 tell you is broad. And he said, *In my experience, whenever*  
02:32:21 25 *I do one of these, there's always some indication that could*



02:32:27 1 be equivalent. In other words, 90 percent of it says no  
2 molestation happened here, but there's this 10 percent over  
3 here that you can look at either way, and I have to make a  
4 judgment call. He said, In this case -- and it may be the  
02:32:43 5 only case I've ever had -- there was nothing that even  
6 remotely suggested that Cary Hardwick had a sexual interest  
7 in young girls, much less his daughter.

8 And so, what did Dr. Howell recommend to the  
9 Court? Dr. Howell said, First of all, there's no abuse.  
02:33:05 10 That's ruled out. Secondly, Mr. Hardwick should have more  
11 than standard visitation. More than standard custody  
12 rights. Because when I say "standard" and when it was said  
13 back in those days -- 1996 is where we are now, you  
14 remember -- there were formulas and men usually got maybe  
02:33:28 15 40 percent of the time with kids and the mother usually got  
16 60 and that would be standard. And I may have that number  
17 wrong, but it's something like that.

18 But, anyway, the doctor is saying more. Well, you  
19 could imagine that most people would be very relieved to  
02:33:44 20 hear that dad isn't molesting a daughter. Not here.  
21 Deanna Fogarty-Hardwick criticized the doctor. Was upset.  
22 Felt he was unprofessional. And she went out and found  
23 another doctor.

24 Now, we moved up to, like, 1997 and we're crossing  
02:34:12 25 into 1998. She found a Dr. Johnson. Thomas Johnson. And

02:34:18 1 she said to Cary, *I want another 730 evaluation.* And I have  
2 to tell you, this is very unusual. 730 evaluations are not  
3 done in every case, number one. They are done in rare cases  
4 where they just can't get agreement. And to do more than  
02:34:39 5 one is very rare. Mr. Hardwick said, *Sure. If you want*  
6 *another one, I'll agree to it.*

7 Remember, this is all going on in divorce -- what  
8 I call divorce court. Family law court. So they're filing  
9 declarations back and forth and stipulations and that kind  
02:34:55 10 of thing. But anyway, the upshot of it is, Mr. Hardwick  
11 said, *Sure. If you want another 730 evaluation, I'm*  
12 *agreeable. The only stipulation would have to be that you*  
13 *pay for it, because I paid for the last one, and I'm not*  
14 *requesting another one.*

02:35:12 15 So off they go to Dr. Johnson. Dr. Johnson is  
16 described as the premier 730 evaluator. Now, this is  
17 actually a 733 evaluation. That number surely doesn't mean  
18 anything to you and shouldn't. But what it means is it's a  
19 second opinion so the Court knows that this is going to be a  
02:35:33 20 second opinion, and it's called a 733 evaluation.

21 So Dr. Johnson does his evaluation. Now, to give  
22 you an idea of what these evaluations entail, it's not just  
23 sitting down and reviewing a file. Dr. Johnson may have had  
24 30 hours of interviews. May have spoken to -- I think he  
02:35:55 25 did speak to well over a dozen references that the mother

02:36:01 1 gave and the father gave. Made home visits. Does  
2 psychological testing and very extensive psychological  
3 testing and reduces all that to a report. And in his case I  
4 think his report again to the Court -- to the presiding  
02:36:20 5 judge of the Court. Not to the parties.

6 Then it's up to the Court to decide if I'm going  
7 to distribute it to the parties. But he did his report to  
8 the Court. What did he say?

9 Well, first of all, it's important to note now  
02:36:35 10 we're in 1997 and 1998 that one of the things that he was  
11 specifically told by the Court to investigate was -- you  
12 guessed it -- a recurring allegation of sexual abuse against  
13 the father; specifically, that he's abusing his oldest  
14 daughter. That's number three by my count.

02:37:02 15 Dr. Thomas Johnson does all that work, all those  
16 hours, all those tests, makes all those interviews. And  
17 what does he conclude?

18 There's no abuse. Dr. Howell is correct. And I  
19 agree with what Dr. Howell recommended about extra  
02:37:23 20 visitation, and I think there should be more on top of that  
21 for the father. And he specified what he wanted to happen.  
22 What was the reaction to that?

23 Well, most people would be greatly relieved that  
24 their daughter was not getting molested by their father.  
02:37:54 25 She refused. Deanna Fogarty-Hardwick refused to make the

02:38:00 1 payment to Dr. Johnson. She was upset.

2 Now, we are coming to the effect -- Dr. Johnson's  
3 report comes out in December of 1998, if memory serves. So  
4 we're crossing into 1999. Now the pressure in the divorce  
02:38:28 5 starts to build, if you can imagine that. It gets worse.  
6 One of the reasons for that is that Mr. Hardwick is getting  
7 remarried. A divorce as to the status of being married had  
8 already occurred. All that remained for litigation was  
9 custody and the money issues and that kind of thing. But  
02:38:47 10 they were no longer -- Deanna Hardwick and Cary Hardwick  
11 were no longer husband and wife. And he is now in the early  
12 part of 1999 about to get married, and it will be up to you  
13 to decide if these things are related, but most of the  
14 experts feel that they were.

02:39:11 15 There were a series of events now in June and July  
16 of 1999 that frankly were ugly events, public events that  
17 involved Deanna Fogarty-Hardwick making a lot of  
18 inappropriate accusations, inappropriate and profane  
19 name-calling of extended family, grandparents at a public  
02:39:45 20 soccer game, things of that nature. And there will be some  
21 testimony about that. And for purposes of the opening, you  
22 need to know that these incidents occurred, that they were  
23 documented for the Court in the way of declarations and the  
24 Court had all of those materials and considered all of those  
02:40:04 25 materials.

02:40:06 1 As those events occurred, Mr. Hardwick decided, I  
2 can no longer sit by and do this. And, in fact, I think he  
3 will testify that he was -- he was -- well, he was told,  
4 *You've got to do something on this custody arrangement.* And  
02:40:25 5 he did.

6 Well, for the first time, in the fall of 1999, he  
7 filed an order to show cause, which is what you file in  
8 family law court basically asking the Court to do two  
9 things: One, review custody, because I want it. Because  
02:40:46 10 the "acting out" is getting uncontrollable, and I believe my  
11 kids are suffering, because of these events. And number  
12 two: *Please, Judge, send us back to Dr. Johnson so that we*  
13 *can -- that my ex-wife can get counseling going so that we*  
14 *can get back on some sane track of co-parenting.*

02:41:09 15 That declaration was set for hearing originally  
16 October 25. That was moved by the Court to November 10.  
17 That's an important day. So on November 10, the Court is  
18 going to hear Mr. Hardwick's request for the first time to  
19 be considered for custody -- legal custody of these kids and  
02:41:38 20 going to hear the request to send them back,

21 Mr. and Mrs. Hardwick, to the 733 evaluator, Dr. Johnson.  
22 That's pending. The pressure is really vague [sic] on  
23 Mrs. Hardwick now. We know that because the notes of  
24 Dr. Mitchell reflect that she told Dr. Mitchell, *I am very*  
02:42:07 25 *worried. Cary is going for custody. Things are really*

02:42:16 1 *tough in the divorce, and I'm highly distressed about it.*

2           That's going to happen on November 10. They go to  
3 court on November 10. And the Judge says, *Okay. I'm*  
4 *appointing a doctor to do the 733 or the 730 evaluation, but*  
02:42:29 5 *it's not going to be Johnson. It's not going to be Howell.*  
6 *It's going to be Dr. Rogers, who if there's anyone that has*  
7 *a higher reputation than Dr. Johnson, it's probably*  
8 *Dr. Rogers. And that order is issued.*

9           So now Deanna Fogarty-Hardwick knows she's going  
02:42:50 10 back in front of yet another qualified professional, on  
11 behalf of another judge and their custody matter; that is,  
12 Mr. Hardwick's request for custody was set for trial on  
13 November 12. The pressure has absolutely gotten out of  
14 control on Ms. Fogarty-Hardwick.

02:43:15 15           As late as August, maybe even September and  
16 October, the notes of Dr. Mitchell reflect that although  
17 Mrs. Fogarty-Hardwick keeps talking about sexual abuse and  
18 molestation and her fears about that -- and she thinks that  
19 it's going on -- that's reflected in the notes.

02:43:38 20 Dr. Mitchell will be here.

21           Kendall and Preslie repeatedly deny any abuse.  
22 Nothing whatsoever. That's in the notes. So there we are  
23 in early November of 1999. The kids have denied any abuse  
24 whatsoever. Got all these big issues hanging in the divorce  
02:44:06 25 court. And what happens?

02:44:07 1 On November 10, there's the court hearing.  
2 Everybody goes to that court hearing and the judge signs his  
3 orders. Then, Cary and Kendall go to Dr. Mitchell's for a  
4 joint session with the therapist. And in that session,  
02:44:26 5 Dr. Mitchell -- and she'll testify to it. Dr. Mitchell says  
6 it was a remarkable session. Kendall got Cary to agree in  
7 the most appropriate fashion that he would take steps to  
8 make sure that soccer thing never happened again, if there's  
9 not a blowup, and he would tell his family to stay away from  
02:44:48 10 soccer games, that's fine. And Kendall was proud of herself  
11 for making that request and the doctor described it this  
12 way: They left the session hand in hand and it was a very  
13 positive session.

14 In the words of Cary Hardwick, *What pressure must*  
02:45:08 15 *have been put on that child.* From approximately 6:00 p.m.  
16 on November 10, until the next morning, what we know is that  
17 mom, as was her custom -- there's nothing nefarious about  
18 this -- Deanna Fogarty-Hardwick -- strike that.

19 Kendall was dropped off by dad at Deanna's home  
02:45:38 20 approximately 6:00 or 6:30 in the evening, on November 10.

21 On November 11th, Kendall wakes up and discloses,  
22 according to her mother, a lifelong pattern of sexual  
23 molestation at the hands of her father. She says she's been  
24 molested since she was age one and that the molestation  
02:46:12 25 happened at every house they ever lived in and that it

02:46:17 1 happened every time -- every time Cary had visitation, and  
2 he used to beat her with a belt. No one ever saw any marks.

3 Now, what is the mother's reaction to this  
4 startling news? There's two things in her life: Number  
02:46:41 5 one, she takes Kendall out and she says, *Tell this to the*  
6 *nanny, because I want a witness.*

7 First thought. Litigation. And then -- and then  
8 she says, *Get in the car. We're going to see Dr. Mitchell.*  
9 *It's an emergency.*

02:47:08 10 Now, this is Veterans Day, November 11th, 1999.  
11 It just so happens that Dr. Mitchell is in her office, but  
12 they go in on an emergency basis. What's the emergency?

13 Cary has no custody of the girl. The emergency  
14 isn't that. The emergency is the court. You remember,  
02:47:36 15 we're going to start trial on November 12. Well, Kendall  
16 discloses -- tells Dr. Mitchell what she told mom. And  
17 Dr. Mitchell is what's known as a mandated reporter. Some  
18 of you may be mandated reporters. And if you are, you know  
19 what I'm talking about. And a mandated reporter must report  
02:48:02 20 any reasonably suspicious allegation of child abuse, whether  
21 they believe it or not. And Dr. Mitchell will tell you, *Ah,*  
22 *I didn't know, but I must say the timing was extremely*  
23 *suspicious.* That's Dr. Mitchell. So Dr. Mitchell does what  
24 she's supposed to do. She makes a report to the Child Abuse  
02:48:28 25 Register, C-A-R, saying, *I reasonably suspect, because this*



02:48:34 1 was disclosed to me. Oh, by the way, the timing is  
2 suspicious. That's all documented. What's the reaction?

3 Dr. Mitchell testified that in her experience,  
4 which again is vast -- you're going to hear from the premier  
02:48:53 5 psychologists in this field: Four of them. She testified  
6 and will testify that the typical reaction of a parent when  
7 I tell them that I have to file a child abuse report, the  
8 typical reaction of the mother is either trying to convince  
9 me not to do it, that it can be fixed, or great relief  
02:49:21 10 because now they can get some help. But it's very teary,  
11 and it's not a pleasant thing.

12 Dr. Mitchell documented -- Mrs. Fogarty-Hardwick  
13 seemed excited and happy. Now, why would that be?

14 That would be because the filing of this child  
02:49:54 15 abuse report immediately gets those people from the Orange  
16 County Department of Public -- Social Service department.  
17 They have to react as an emergency. And within 24 hours,  
18 they are on it. They have paperwork filed in the juvenile  
19 court and a petition is filed to remove the children from  
02:50:25 20 both parents until we find out what's going on because of  
21 this report. And what else does it do?

22 It stops in its tracks the divorce litigation. So  
23 that order that the judge set, that trial that the judge  
24 set, the appointment of Dr. Rogers to do the 730 evaluation,  
02:50:49 25 it's all off. So mom is back to square one. Well, wait a

02:50:55 1 minute. I just said that the petition asked to remove both  
2 kids. It does. And then immediately those folks decided  
3 no, mom is not a threat. So we're going to take the kids  
4 from the parents and then we're going to award the two  
02:51:18 5 children to the mother. Dad's out. Can't ever see his  
6 kids. The only time he could see his kids is with a  
7 monitor. The only way he can phone his kids is with a  
8 monitor on the line. He's got no notice, no hearing,  
9 nothing. Why?

02:51:36 10 Because of that report. Now, I apologize. I know  
11 this is in the weeds. I know this is a long trip, but this  
12 is a trip we have to take. We're going to do justice in  
13 this case. The juvenile court has one mission: What is  
14 best for the kids. The juvenile court really doesn't see  
02:52:13 15 all that's gone on in the family law court. She's a bit of  
16 it: Whatever is reported by the social workers that comes  
17 before the juvenile court. The juvenile court issues some  
18 orders, and you're going to hear these from the witness  
19 stand. The juvenile court tells the parents on the very  
02:52:33 20 first hearing -- and I think that's November 17th -- very  
21 first hearing: *Parents, do not discuss this case with your*  
22 *kids. Do not discuss each other with your children.*

23 And the reason for that is self-evident. It's  
24 obvious that two adults in pitch war are hardly the  
02:53:05 25 appropriate messengers of things involving the other parent

02:53:10 1 through those kids. It's just not good. The judge also  
2 ordered Mr. Hardwick, the natural father of these  
3 children -- and, by the way, he'll tell you how long he has  
4 been clean and sober and without drugs and all of that  
02:53:31 5 stuff. I believe it was in 1996. But he'll tell you.

6 So Mr. Hardwick is only allowed to have monitored  
7 visitation. And what does that mean? "Monitored  
8 visitation" means just what it sounds like. That he can't  
9 see any one of his kids without someone -- a professional,  
02:53:52 10 such as Elaine Wilkins or someone like her, literally  
11 sitting in on the visit to make sure he says nothing  
12 inappropriate; that he does nothing inappropriate. And then  
13 she documents what her observations were, whether the child  
14 was affectionate, whether the child wasn't affectionate,  
02:54:13 15 whether it appears the child is afraid of that man, all of  
16 that kind of thing. Those reports are then -- they are put  
17 in the reports and they go over to the court.

18 So we have a disclosure of sexual molestation that  
19 is sitting in front of that judge, and it has some internal  
02:54:38 20 issues that make it a little questionable. For example,  
21 Kendall, when she talked to Dr. Mitchell, she said, *I've*  
22 *been molested all the way until I was one year old.*

23 The social worker asked Kendall, *How do you*  
24 *remember when you were one year old?*

02:55:01 25 Kendall says, *My mom remembers.*

02:55:06 1 That's documented. And that goes over to the  
2 court. Of course that's significant. Does it mean that  
3 she's coaching? Not necessarily. But it's an issue. And  
4 the social worker said that. The social worker is also  
02:55:27 5 noted and pointed out to the Court that the timing of this  
6 disclosure of child molestation is very suspicious for all  
7 of the reasons that I discussed with you.

8 Now, on the next three hearings through  
9 February 8th, 2000 -- maybe it's four or five hearings  
02:55:52 10 actually -- a pattern develops. Visits are becoming a  
11 problem. Phone calls are becoming a problem. And when the  
12 judge hears about it, he says -- and it's on the record --  
13 *I'm not putting up with this. You're not going -- he's*  
14 *telling this to Mrs. Fogarty-Hardwick: You are not going to*  
02:56:15 15 *run this. If I say the father gets visits, he gets visits.*  
16 *And if I say he gets phone calls, he gets phone calls. No*  
17 *excuses. No cancellations and rescheduling. That's the*  
18 *order of the day. That's the order of the Court. And if*  
19 *you -- and he said directly to her: Ma'am, are you*  
02:56:39 20 *listening to me? If you don't do this, if you don't do*  
21 *this, your children will be removed to Orangewood. I don't*  
22 *want to do that, but I will because it's imperative that*  
23 *these children see their father.*

24 That was on February 8. The next scheduled  
02:57:11 25 visit -- oh, by the way, all that I just told you, that's

02:57:16 1 February 8th. Marcie Vreeken isn't even on the case. She  
2 doesn't know any of these issues. She doesn't have any idea  
3 about anything that I've told you now from way too long, and  
4 I know that and I appreciate some of you are still awake.

02:57:34 5 But she's not aware of this. Mom is aware of this. Mom  
6 knows the Judge. He's at the end of the line. That's  
7 February 8th.

8 The next schedule visitation is February 13th.  
9 Doesn't happen. Mom shows up and Kendall reportedly says, *I*  
02:58:09 10 *don't want to visit with my dad.*

11 Mom drives off. So dad and the monitor are there.  
12 By the way, dad doesn't know about some of this either, but  
13 he knows that he's not getting to see his daughter. And he  
14 knows he's heartbroken because of it.

02:58:30 15 So on February 17, yes, it's true, that Marcie  
16 Vreeken and Elaine Wilkins informed the Court of what they  
17 heard on the 15th. By the way, the 15th was a rescheduled  
18 visit, the one that was canceled on the 14th. The  
19 15th happened in the offices. The 14th was off campus --  
02:58:59 20 the 13th (sic), and that's important to the father. But,  
21 nonetheless, that visitation occurs. And then we have  
22 this -- according to Mrs. Ms. Fogarty-Hardwick -- that  
23 Marcie Vreeken had no idea what any of the controversy was,  
24 because she doesn't know about the Judge's orders. She  
02:59:22 25 doesn't know about the Judge saying, *If you miss a visit,*

02:59:26 1 *the kids are going to Orangewood.*

2           What she does know is that she went in to  
3 introduce herself to the kids, because on February 10, she  
4 is assigned this case to take it to conclusion. That's her  
02:59:42 5 first involvement in the case. February 10, she doesn't  
6 know anybody. So she's told that, *Hey, the Hardwick kids*  
7 *will be in here for a visit from their dad, if you want to*  
8 *go introduce yourself.* And she said, *Sure, I do.* And she  
9 did.

02:59:58 10           And she went into the visitation room when it was  
11 almost over and the girls were in there and she said, *Hi.*  
12 *I'm Marcie Vreeken.* And I believe she sat down on one of  
13 those little -- very little kids' chairs, and she was  
14 chatting with Kendall. Preslie ran out of the room. She's  
03:00:20 15 chatting with Kendall, and -- because she was given specific  
16 directions to check on visitation and phone calls. That was  
17 the Court's order. I want social services to advise me, and  
18 she did. She said to Kendall, *How is the visitation going?*

19           And Kendall said, according to Marcie Vreeken --  
03:00:40 20 now maybe she's lying. I don't know why. I don't know any  
21 of the back story here. Kendall said, *We didn't have a*  
22 *visit. I hate my dad.*

23           Well, that's unusual. That's very unusual. *Why*  
24 *do you hate your dad?*

03:00:56 25           *Because he didn't take me to a birthday party.*

03:01:00 1 *Sometimes I like my dad. Everybody likes my dad.*

2 *She's a troubled child. And Marcie just makes*  
3 *note of that. And she goes and the next thing she's hearing*  
4 *is Mrs. Fogarty-Hardwick reacting volcanically, very upset.*

03:01:20 5 *Well, why would she be upset?*

6 *It would make all the sense in the world, if*  
7 *you're Mrs. Fogarty-Hardwick, because Preslie ran over and*  
8 *said, The lady is talking to Kendall about our visit.*

9 *Bingo. Mrs. Fogarty-Hardwick knows, Oh, my goodness. I'm*  
03:01:41 10 *in trouble. She's going to tell them we didn't have that*  
11 *visit. I'm going to lose my kids.*

12 *And, yes, she did say, You're going to take my*  
13 *kids away from me, aren't you? And ran out of the room.*  
14 *That's an inappropriate comment, but that's what happened.*

03:01:57 15 *But the story isn't over, and I'm sure you're*  
16 *sorry about that. The kids ultimately went to a foster*  
17 *home. They were removed. They went to Orangewood.*

18 *Preslie, at least, what she told me under oath is, she*  
19 *doesn't remember anything about Orangewood except, possibly,*  
03:02:16 20 *getting a shot. And I think she remembered a typewriter or*

21 *something. She didn't remember anything else. She*  
22 *remembered she and her sister stayed in the same cottage,*  
23 *and she might have remembered something about church. I'm*

24 *not sure. But other than that, she didn't remember*

03:02:33 25 *anything.*

03:02:33 1 And then they went from there to the Gibsons'  
2 foster home. And by every measure, by everyone including  
3 Preslie and including Kendall, the Gibsons were wonderful  
4 people. Two sisters. And they were just wonderful. And  
03:02:53 5 their reports to the Court say, These kids are flourishing  
6 in that foster care. And these kids will tell you, they  
7 loved the Gibsons. Two ladies. And they -- they're in the  
8 Gibsons'. And there's a motion that is made because the  
9 dependency court is saying, *Okay. We're going to have a*  
03:03:30 10 *trial on this child abuse. We're going to find out what's*  
11 *going on here, and I want to get it started.* So they're in  
12 trial for, oh, about a month from March until maybe April.  
13 And it's off and on. It's not every day. And the parties  
14 are Mrs. Hardwick, Mr. Hardwick. The kids, they have their  
03:03:53 15 own attorney appointed by the Court, and that's their own  
16 attorney. That's not an attorney that has to march to the  
17 drummer of -- what? -- Orange County, or anything else.  
18 That's an attorney appointed by the Court to express to the  
19 Court what the kids want and what's in their best interest.  
03:04:10 20 And the kids had their own attorney.

21 And the parties went to the Judge and said, *You*  
22 *know, Judge, we'd like to explore a 301 agreement.*

23 Now, what is a 301 agreement? A 301 agreement  
24 basically, if it's approved by the Court, it basically says,  
03:04:30 25 *Okay, we're going to let you have a voluntary case plan that*



03:04:35 1 *does the things that are specified in the agreement*  
2 *regarding custody or whatever other issues there are, and*  
3 *then, I won't continue with this trial in juvenile court.*

4 *And so, for the parents, it's a good thing because*  
03:04:51 5 *they don't run the risk of having their kids adjudicated*  
6 *dependent children and literally taken. And so, the Judge*  
7 *says, You know, I'm skeptical of this. He knew the history*  
8 *of this and he knew how it just was going and going and*  
9 *going and just wouldn't stop. But he said, I'll tell you*  
03:05:12 10 *what. I'm going to appoint Dr. Rogers.*

11 *Remember, she's the one back on November 10 that*  
12 *was appointed and never got to do the evaluation. Now, the*  
13 *juvenile court said, I'm going to appoint her to have her do*  
14 *the evaluation she never did, and see what she says. And*  
03:05:34 15 *I'm going to ask her a couple of questions:*

16 *One, is this a case that is appropriate for,*  
17 *basically, informal supervision by social welfare, given its*  
18 *history? Two, is this child being abused, because these*  
19 *issues -- this allegation keeps surfacing, and I want an*  
03:05:57 20 *answer.*

21 *Dr. Rogers did a report, and I'm -- she did a huge*  
22 *amount of work in a very short time in one month and she*  
23 *issued a 70-page report detailing all sorts of things.*  
24 *She's going to come in here and testify. I have her under*  
03:06:17 25 *subpoena. And she will testify that, again, for the fourth*

03:06:23 1 time, there is no abuse of Kendall Hardwick. But Dr. Rogers  
2 also said, *This is not a good case for one of these 301*  
3 *agreements, and I'll tell you why, because the mother is so*  
4 *hypervigilant and Kendall is so vulnerable to this.* Why is  
03:06:49 5 Kendall so vulnerable to the hypervigilant mood swings of  
6 her mother in this divorce mess?

7 Well, Kendall has that -- a light case -- I call  
8 it a light case of autism. I didn't notice it when I first  
9 met her, but she does have it. And one of the things  
03:07:12 10 Dr. Rogers will tell you is that that causes -- can cause  
11 meta-cognition issues. What are meta-cognition issues?

12 One is called theory of the mind, and I forget the  
13 other one. But the bottom line is a child like Kendall with  
14 that condition can very easily be confused about the sources  
03:07:37 15 of memory, and she will think that things she's been told  
16 are actually things that happened to her.

17 Okay. Now, young kids have that, but they grow  
18 out of it by age five or six. Kendall takes much longer.  
19 So she's very vulnerable. Now, it's not to everybody. I  
03:07:57 20 couldn't walk up to her and say, *Do you remember when you*  
21 *had this?*

22 But she is unduly vulnerable to suggestions by  
23 someone who's closely attached to, and there is no question  
24 that Kendall and her mother were closely attached. So she  
03:08:17 25 is vulnerable to manipulation. And Dr. Rogers says that's

03:08:26 1 just what happened. This child was given suggestions,  
2 questions: *Were you ever touched? And did this ever*  
3 *happen? And did that ever happen?* And before you know it,  
4 this is the words of Dr. Rogers. She said on November --  
03:08:45 5 that period, November 10, November 11th, when mom and  
6 Kendall were sleeping together and they are having a girls'  
7 sleepover, during that night and morning, Dr. Rogers said --  
8 she described it as "Kendall threw in the towel." She knew  
9 she could help mom. She could make mom feel better. And  
03:09:12 10 out comes all this horrific -- and I'll say it again  
11 "horrific" and false allegations of abuse.

12 Counsel says, *Well, we don't know and we'll never*  
13 *know if there was abuse.*

14 Well, the 301 agreement, we're going to get to  
03:09:41 15 that. The 301 agreement actually did occur. Now, the  
16 interesting thing about that was, number one, the Judge  
17 approved it. And number two, Mrs. Hardwick signed it and  
18 had it read to her at counsel (sic) -- I think at that time  
19 she was represented by three different lawyers.

03:10:03 20 Mr. Hardwick read it, had his counsel explain it to me.  
21 Marcie Vreeken, I don't think she was even there, but she  
22 signed it, and it was delivered to her. And the parties all  
23 agreed to a whole number of things. But the two that caught  
24 my eye: One, Kendall hasn't been molested. That's a  
03:10:25 25 blanket statement. Kendall recanted.

03:10:29 1 And second thing is: Mother makes inappropriate  
2 statements. Now, that's listed as something that's a key  
3 problem and must be worked on. So the plan has to involve  
4 therapy for that. And, obviously, the Court never would  
03:10:52 5 have approved it, if there hadn't been some resolution to  
6 this ongoing and ongoing allegation of sexual abuse by  
7 Cary Hardwick.

8 So the question surfaces. And Dr. Mitchell asked  
9 the question of Mrs. Hardwick, *If you believe that your*  
03:11:21 10 *child is being molested by Mr. Hardwick, if you really*  
11 *believed that, why would you ever sign this agreement,*  
12 *because it gave custody of the children to Mr. Hardwick.*  
13 *That was Dr. Rogers' recommendation. Custody goes to dad.*  
14 *Mom gets monitored visitation. Why? Because she made*  
03:11:43 15 *inappropriate statements and poisoned the children.*

16 Inadvertently. She can't help herself. Deanna  
17 Fogarty-Hardwick says, *I understand your concern, Doctor.*  
18 *Why would any mother ever sign a child over to someone she*  
19 *truly believes was molesting her child?*

03:12:12 20 It wouldn't happen. She said, *I relied on*  
21 *Dr. Rogers. She's very well thought of. And I said, Okay.*  
22 *If that's what she says, then I'm on board.*

23 What's the next thing that happened?

24 Well, by signing this agreement, that ends the  
03:12:36 25 jurisdiction of the juvenile court. So back they go to

03:12:40 1 family law court where we have that hanging order that says,  
2 Appoint Dr. Rogers. And they get back in the family law  
3 court, and what is the first thing? What is the first thing  
4 that Deanna Fogarty-Hardwick does through her lawyers?

03:12:56 5 The first thing: Throw out the 301 agreement. *I*  
6 *didn't -- I didn't have a fair chance to consider it. Throw*  
7 *it out. Give me the kids back.*

8 And what else did she do?

9 She said in a sworn declaration that Dr. Rogers,  
03:13:20 10 the same one that she said, *I'm going to rely on him or her.*  
11 *If she says my child is not being molested, then I'm on*  
12 *board with that, because she's so good.*

13 In her declaration in family law court to throw  
14 out the 301 agreement, she says, *Dr. Rogers, her report is*  
03:13:41 15 *wildly inaccurate. And she did a terrible job.*

16 I wanted to ask the question, but of course this  
17 question didn't quite get asked: *Well, wait a minute. You*  
18 *can't have it both ways, but that's -- we'll talk about that*  
19 *later.*

03:13:59 20 So what's the next thing that happens? The  
21 Judge -- and I'm going to skip a few things here. Sorry  
22 about that. The judge has hearings and get papers and all  
23 that. And he says, *I'm not going to throw out this 301*  
24 *agreement. You all signed it. You all had your lawyers*  
03:14:25 25 *read it to you. You all entered it voluntarily. You all*

03:14:28 1 are grown up. And it was good enough for that Judge; it's  
2 good enough for this Judge. And I'm not doing it.

3 What was Deanna Fogarty-Hardwick's reaction to  
4 that? She moved to disqualify the judge. Get him off the  
03:14:47 5 case. She went to the Board of Judicial Inquiry, or  
6 whatever they call it. Filed a complaint against him. And  
7 said, *He's biased*.

8 It didn't succeed. And as the case is winding  
9 down -- not really winding down, but I'm going to wind it  
03:15:17 10 down for you. And the judge in family law court said, *I*  
11 *want briefs from the parties on the custody issue, who*  
12 *should have custody*.

13 You recall Mrs. Fogarty-Hardwick voluntarily gave  
14 up custodial rights to the children. The children through  
03:15:44 15 their lawyers argued that they should stay with dad. The  
16 reports from those who are treating with the therapist that  
17 the kids are flourishing with dad, academically, socially,  
18 in church, every way possible, so it's a good situation. So  
19 anyway, the --

03:16:11 20 Now we're getting up into 2001, and the judge  
21 asked for briefs from the parties. The children, Preslie  
22 and Kendall, through their counsel, they file a brief. And  
23 what they say is, among other things, there has been no  
24 sexual abuse. We're flourishing with dad. The only  
03:16:47 25 unhappiness we have is we're not getting visits from mom.

03:16:51 1 After the judge denied mom's attempt to upset that  
2 301 agreement, Deanna Fogarty-Hardwick just simply stopped  
3 visiting the kids for a period of almost a year. The judge  
4 got on her case about it and said, *How can you not visit*  
03:17:22 5 *your children? Why are you not visiting your children?*

6 Cary Hardwick filed a brief. He said, *She's not*  
7 *visiting her children to punish them for recanting the*  
8 *sexual abuse claims and for stating that their -- that dad*  
9 *is actually okay. I don't know that that's true. That's an*  
03:17:40 10 *understandable position for a father to think that there is,*  
11 *but that's neither here nor there.*

12 What is important is that Preslie, along with her  
13 sister said, *Please, keep the status quo. Keep us with dad.*

14 Dr. Rogers was asked to give the Court another  
03:18:05 15 report, and she did. Nothing had changed. Literally,  
16 nothing had changed. She said, *I made overtures to*  
17 *Mrs. Fogarty-Hardwick to see if we can sit down one-on-one*  
18 *and work through some of these things and to see what her*  
19 *reaction was. She never contacted me. Never happened. So*  
03:18:31 20 *Judge, until I'm satisfied that she can be appropriate*  
21 *around these children, I cannot ever recommend lifting the*  
22 *monitor requirement for her visitation, and she didn't.*

23 We're almost done. The Judge issued an opinion --  
24 a written opinion. And in the opinion, he made a number of  
03:19:04 25 observations. One of them was --

03:19:08 1 MR. POWELL: Objection, Your Honor.

2 THE COURT: Sustained.

3 MR. WATKINS: The record in that proceeding shows  
4 that there was evidence admitted of a story that was written  
03:19:25 5 by Kendall. It's a handwritten story. And it's called "The  
6 Hardships." She wrote it when she was 10, maybe 11. And  
7 it's got misspellings and she used names. She disguised --  
8 she and her sister called them "Jody" and "Ashley," and she  
9 said that *Jody and Ashley's mother fed Jody or Ashley,*  
03:20:00 10 *whichever one Kendall was, with lies and then caused us to*  
11 *be taken away.*

12 And you read it and you think, that's the wisdom  
13 of an 11-year-old. The judge quoted that and said, *To me*  
14 *that's autobiographical.*

03:20:20 15 MR. POWELL: Objection.

16 THE COURT: Sustained at this point.

17 We'll move on.

18 MR. WATKINS: The case ended then. There was a  
19 final order. And, eventually, Mr. and Mrs. Hardwick were  
03:20:47 20 able to co-parent, and I think the divorce case actually  
21 terminated in 2006. The divorce case lasted twice as long  
22 as the marriage. Preslie Hardwick, obviously, was caught up  
23 in this. Her older sister was, frankly, the tip of the  
24 spear, so to speak. And Preslie -- whatever happened to  
03:21:18 25 Kendall happened to Preslie. They always stayed together,



03:21:23 1 and that's the way it should be.

2 And Kendall was deposed several times. And on the  
3 last occasion, she confirmed that her mother fed her all  
4 this information about the molestation. It's a very  
03:21:50 5 emotional videotape, or you may see it, or she may be here  
6 alive. She's from out of state. And in that videotape,  
7 she's very emotional, to say the least, and doesn't have a  
8 whole lot of kind words to say about her mother, but she  
9 does say something remarkable. She thanks the social  
03:22:12 10 workers for what they did and says they did the right thing  
11 and that she'd much rather have had that happen again,  
12 because they did the right thing by her.

13 Now, the one that I know that Kendall said on that  
14 videotape -- she's in tears and she's loud, and she's  
03:22:41 15 profane and she says, *This has to end*. And you know what?  
16 This does have to end. My opening is going to end. And  
17 this case may bring to an end this nightmare for these kids.

18 Thank you, Your Honor. Thank you, ladies and  
19 gentlemen.

03:22:58 20 THE COURT: All right. We're going to take the  
21 afternoon recess now. Normally, we take it at 3:15. I  
22 didn't want to interrupt anyone during opening statement.  
23 So we'll take 15 minutes. Then we'll come back. We're  
24 going to conclude on time at 4:30, as we always will.

03:23:11 25 Keep in mind the Court's admonition that you're

03:23:13 1 not to discuss this case with each other, or anyone else, or  
2 allow anyone to discuss it with you.

3 THE CLERK: All rise.

4 *(Recess taken from 3:23 p.m. to 3:43 p.m.)*

03:43:31 5 *(The following proceedings were had in open court*  
6 *in the presence of the jury:)*

7 THE COURT: And is the plaintiff prepared to call  
8 her first witness?

9 MR. POWELL: Yes, Your Honor.

03:43:44 10 Plaintiff would call Deanna Fogarty-Hardwick.

11 THE CLERK: Please raise your right hand.

12 DEANNA FOGARTY, PLAINTIFF'S WITNESS, SWORN

13 THE WITNESS: I do.

14 THE CLERK: Step forward.

03:44:07 15 *(Pause.)*

16 THE CLERK: If you can, please, state your full  
17 name, spelling it for the record.

18 THE WITNESS: Deanna Fogarty, D-e-a-n-n-a  
19 F-o-g-a-r-t-y.

03:44:32 20 THE CLERK: Thank you.

21 DIRECT EXAMINATION

22 BY MR. POWELL:

23 Q I'll let you get some water, Ms. Fogarty.

24 A Thank you.

03:44:47 25 Q All right. Ms. Fogarty --

03:44:52 1 A Yes.

2 Q -- do you know the lady sitting here at counsel's table

3 with the blond hair?

4 A I do.

03:44:58 5 Q Who is that?

6 A That's my daughter, Preslie.

7 Q Do you have any other children?

8 A I do.

9 Q And who are they?

03:45:04 10 A That's Kendall.

11 Q And is Kendall and Preslie the product of a

12 relationship with Cary Hardwick?

13 A They are.

14 Q When were you married with Mr. Hardwick?

03:45:16 15 A We were married in 1989.

16 Q Okay. I want to take you a little bit through your

17 background.

18 Where were you born?

19 A I was born in Lynwood, California.

03:45:28 20 Q And I'm not going to ask your age, but your date of

21 birth. And I'm not going to ask your date of birth. Your

22 year of birth?

23 A Oh, okay. My year of birth? 1956.

24 Q I guess that did give away your age, though.

03:45:45 25 A It did.

03:45:45 1 Q Now, did you -- were you raised by an intact set of  
2 parents?

3 A Oh, absolutely, yes.

4 Q Are they still married?

03:45:53 5 A My father passed away -- will be just about two years  
6 in June, but they were married for about 60 years.

7 Q Did your -- what did you do for work, say, through your  
8 teen years until early college?

9 A Teen years, my mom had dress shops. And when I was in  
03:46:12 10 high school going forward, I worked in the dress shops with  
11 her.

12 Q Was there any other kind of business, family business  
13 that you participated in?

14 A Well, it's unusual; but for me, it's not. My  
03:46:22 15 grandfather and my father were in the meat business, so as a  
16 young child, I worked -- when I was very small -- in a meat  
17 business and continued to until I purchased my own business.

18 Q And what was that business?

19 A It was a meat route.

03:46:36 20 Q Delivering of meat goods?

21 A Delivered meat. That's right.

22 Q You were actually the driver?

23 A I actually drove my own truck. I did.

24 Q Okay. Were you happy when you got married?

03:46:51 25 A Oh, I was ecstatic. Absolutely. I was in my 30s. And

03:46:56 1 so I was very looking forward to being married and starting  
2 a family.

3 Q And what was Mr. Hardwick doing in terms of employment  
4 at that time?

03:47:07 5 A You know, I was quite proud of him. He had just opened  
6 a new restaurant, so it had been opened about six months.

7 Q Was this a restaurant he owned on his own?

8 A Well, it was with a couple of partners and also a  
9 limited partnership structure.

03:47:24 10 Q Okay. How long from when you began dating until the  
11 time you got married?

12 A It was a whirlwind. Six months.

13 Q Did you discuss ahead of time, your intent -- meaning  
14 both of you -- intent on having children?

03:47:42 15 A Oh, we did have that conversation. And we were looking  
16 forward to having -- we were both looking forward to having  
17 a family. Sure.

18 Q And so about how long after you got married did you  
19 have --

03:47:53 20 Well, did you first get pregnant?

21 A First got pregnant?

22 Q Yeah.

23 A Well, we had a pregnancy that subsequently miscarried.  
24 That was our first pregnancy, but --

03:48:08 25 Q All right. So you had a child. How far did the child

03:48:12 1

get to term?

2

A Just about four months.

3

Q And then, it's pretty clear. Kendall was the next child, correct?

4

03:48:19 5

A That's correct. Uh-huh.

6

Q And when was she born? What year, at least?

7

A She was born in 1990.

8

Q Okay. That would have made you about 32 at the time?

9

A That's correct.

03:48:31 10

Q Were there any issues or problems with regards to Kendall's birth or immediately after her birth?

11

12

A Well, immediately after her birth, it came to our attention that her tummy was a bit distended when she was born. And unbeknownst to me, a nurse that really paid close attention, she was measuring her stomach and her stomach was continuing to expand to the point where the nurse came to us and said we need to do an X-ray.

13

14

03:48:53 15

attention, she was measuring her stomach and her stomach was continuing to expand to the point where the nurse came to us and said we need to do an X-ray.

16

17

18

Q And what were the results of the X-ray?

19

A It showed a large mass in her abdomen.

03:49:07 20

Q Okay. How was the large mass dealt with?

21

A She was immediately transferred to another hospital.

22

Long Beach Memorial in Long Beach.

23

Q Were there any concerns of losing Kendall at that time?

24

A Oh, absolutely. Since we had had a miscarriage

03:49:24 25

already, we were sensitive to that and we weren't sure if

03:49:27 1 this was going to be a malignant type of tumor, if she was  
2 capable of surviving any surgeries.

3 Q Would you agree that you might be more hypersensitive  
4 to issues surrounding your children than a parent who hadn't  
03:49:44 5 gone through a miscarriage and that medical condition that  
6 Kendall suffered?

7 MR. WATKINS: Objection, Your Honor.

8 Lacks foundation and relevance.

9 THE COURT: Sustained.

03:49:54 10 BY MR. POWELL:

11 Q All right. Now, when Kendall was receiving the  
12 surgery, were you able to be there yourself?

13 A I wasn't. Her birth was a C-section delivery. She was  
14 breached and, therefore, I was in the other medical center,  
03:50:16 15 which was Los Alamitos Medical Center. She was transferred  
16 to Long Beach Memorial, as I said. So we weren't together.

17 Q So tell me in the -- let's say the first year after  
18 Kendall is born, you got a newborn in the home. Dad is  
19 working at the restaurant.

03:50:34 20 What are you doing?

21 A Taking care of our baby. It was decided between the  
22 two of us since he had the new business, he was the  
23 appropriate one to continue to work and I would be a  
24 stay-at-home mom.

03:50:47 25 Q Did that go on for about a year or more?

03:50:51 1 A Well, I would say it continued and it was intended to  
2 continue until both our children were -- got out of  
3 elementary school. That was the intention. But I  
4 definitely, yeah, did continue for the next year and a half.

03:51:05 5 Q Okay. Between the birth of Kendall and later the birth  
6 of Preslie, did you seek out any outside assistance to help  
7 you with raising the kids?

8 A There was a point where a friend of mine had this  
9 wonderful nanny that she talked about and raved about and  
03:51:23 10 she was a live-in, and she was going to have to let her go.

11 My daughter, Kendall, had developed some peculiar  
12 behaviors and she was very sensitive to external factors --  
13 sound, light, wind -- and I found that her schedule required  
14 that she be on a regular schedule, and if it was disrupted,  
03:51:46 15 she really -- it showed in her behavior greatly. So I told  
16 this particular nanny that I would be happy to take her on  
17 for a day or two per week.

18 MR. WATKINS: Your Honor, move to strike as  
19 nonresponsive.

03:52:04 20 THE COURT: Yes. It was a simple "yes" or "no"  
21 answer, so you'll need to listen carefully to the questions.

22 THE WITNESS: Okay.

23 THE COURT: Did you seek out any outside  
24 assistance to help you with raising --

03:52:18 25 THE WITNESS: I apologize. I did.



03:52:19 1 BY MR. POWELL:

2 Q Who was that?

3 A Rosie Reales.

4 Q How did you come to hire Ms. Rosie Reales?

03:52:29 5 A Through a friend of mine. She had fired -- could  
6 not -- no longer keep her on.

7 Q Now, you also started talking there about issues with  
8 Kendall and sensitivities that she was starting to display.

9 A Correct.

03:52:42 10 Q I'm kind of yelling on behalf of Mr. Watkins, who  
11 earlier said he had trouble hearing me.

12 What kinds of things caused you concern in her  
13 behaviors?

14 A Well, she walked on her toes. She hand-flapped. She  
03:52:56 15 responded to the wind. When she would see the wind when she  
16 was inside the house, she would close all the windows and  
17 doors. She would cover her ears. If I took her out -- I  
18 remember in particular, there was a Target that was nearby.

19 The lights, she seemed to respond to even the buzzing in the  
03:53:12 20 lights. And so, it was -- it was -- it was difficult at  
21 best. I wasn't sure what was going on and how to best, you  
22 know --

23 Q So did you eventually find out what was going on?

24 A Well, ultimately, I did, yeah.

03:53:28 25 Q And how did you find that out? Shortly tell us how

03:53:32 1 that process begin and ended to where you got to a  
2 diagnosis, if you did.

3 A Sure. One of her teachers suggested that there -- she  
4 may have a bit of autism and that was there was a specialist  
03:53:43 5 that she thought she should see out of U.C.L.A. So I did  
6 take her to that specialist, and she was -- she went through  
7 a rigorous process, and the -- that doctor had said she had  
8 pervasive developmental disorder, which was on the autism  
9 spectrum.

03:54:05 10 MR. WATKINS: Your Honor, again, nonresponsive.  
11 Way beyond the question.

12 THE COURT: Overruled.

13 BY MR. POWELL:

14 Q Do you know, as best as you can in time, when that  
03:54:15 15 diagnosis was fully known? '93? '94? '95? Her birthday,  
16 whatever?

17 A Sure. I can tell you, situationally, it was when she  
18 started school. She was in pre-- like pre-K.

19 Q Okay. So Preslie was born by then, correct?

03:54:34 20 A She was.

21 Q Okay. And when was Preslie born?

22 A Preslie was born in '93.

23 Q And -- okay. So these children were three years apart?

24 A Yes. Exactly three years apart. And I'm sorry. I may  
03:54:50 25 need to correct that. I'm just trying to rethink if Preslie

03:54:53 1 was born already when Kendall was diagnosed. I can't be  
2 certain of that.

3 Q In that close range, though?

4 A Correct.

03:54:59 5 Q And so, did that -- was this nanny, Rosie Reales, was  
6 she already working for you when you found out about this  
7 diagnosis?

8 A Again, I'm not sure of the timing on that. But,  
9 certainly, Kendall was exhibiting these behaviors by the  
03:55:15 10 time Ms. Reales came on. In fact, that's why I was offering  
11 her a day, possibly two a week.

12 Q Did she eventually become full time?

13 A She did.

14 Q Did she bond with your children?

03:55:28 15 A Oh, immensely.

16 Q How would you describe the bond that they shared by the  
17 time CPS became involved in 1999?

18 A I would say a strong bond. Very strong bond.

19 Q Now, back to kind of what's going on in the family  
03:55:43 20 work-wise. What's dad doing now that you've determined that  
21 Kendall has got the autism; Preslie is out. She's toddling.

22 What's the work situation in the household?

23 A Well, if I have this correctly, I think, about when  
24 Preslie was born is -- my husband had suffered a succession  
03:56:03 25 of losses -- his grandmother and his father -- so he was

03:56:07 1 appointed special administrator of his father's estate and  
2 we were running that and a second restaurant.

3 Q You mean --

4 *(Court Reporter requests clarification for the*  
03:56:14 5 *record.)*

6 THE COURT: If you can slow down a little bit and  
7 make sure that the question is fully asked before the answer  
8 begins, that would be helpful.

9 So if you could re-ask that last question that you  
03:56:31 10 asked.

11 You started --

12 MR. POWELL: Can I ask for a read-back,  
13 Your Honor?

14 Well, she answered "... running a second  
03:56:34 15 restaurant," and you started a question, "You mean" --

16 BY MR. POWELL:

17 Q You had at least three things going on: Two  
18 restaurants and a business -- something to do with the  
19 estate of a relative, correct?

03:56:51 20 A Yes.

21 Q Was there any other businesses that your husband was  
22 involved in?

23 A Outside of the two restaurants and the medical billing  
24 and collections business, no.

03:57:03 25 Q Okay. When you say medical collections and billings,

03:57:05 1 is that what you were talking about he was the special  
2 administrator of?

3 A Correct. Uh-huh.

4 Q And were you working at this time when all this was  
03:57:13 5 going on for Mr. Hardwick?

6 A I was pregnant. I was intermittently working at the  
7 first restaurant. I was waiting tables and helping with the  
8 opening of the second restaurant. And, ultimately, it was a  
9 lot going on for my husband. I ended up taking over

03:57:34 10 managing the medical collections business.

11 Q So did the medical collections business allow you to  
12 work for home more frequently?

13 A It did not. Not at that time, no. I went into the  
14 office, and I brought Preslie with me.

03:57:50 15 Q Okay. Well, you talked about the structure, the need  
16 for structure of Kendall earlier in your testimony.

17 What, if anything, did you do to address that when  
18 you said it was pretty much diagnosed by pre-K? What did  
19 you do to address it, if anything?

03:58:03 20 A In terms of her structure?

21 Q In terms of whatever it is that the doctor was saying  
22 she needed.

23 A Well, I made sure that I educated myself. I got  
24 involved with a lot of Autism Society programs with other  
03:58:18 25 parents. I made sure that her environment and her schedule

03:58:25 1 was something she could rely on. I got -- I advocated for  
2 her to get the proper support in school in terms of her RSP  
3 support, which would have been language support, to be  
4 specific.

03:58:41 5 Q "RSP support" has something to do with language skills?

6 A In this particular case -- in her case, it was language  
7 at that time.

8 Q So she was having language issues as well?

9 A Yes.

03:58:54 10 Q So when the child was between the ages of four and six,  
11 how many days a week would you spend working with her on  
12 things designed to address her autism issues?

13 A Well, throughout her life, I worked with her every day.  
14 But when -- at this particular time in our lives when I was  
03:59:14 15 helping with the businesses and had a second child, that's  
16 when Rosie took on more time. And so, I had less time with  
17 her directly.

18 Q Now, did you raise both of your children telling them  
19 the importance of being honest, telling the truth?

03:59:37 20 MR. WATKINS: Your Honor, I'm going to object.  
21 It's argumentative, and it's leading.

22 THE COURT: Overruled.

23 THE WITNESS: Absolutely.

24 BY MR. POWELL:

03:59:50 25 Q Did you explain to them -- let's start with Kendall.

03:59:56 1 Was there an age where you started talking to  
2 Kendall about the issues of inappropriate touching, things  
3 like that? You know, don't let people touch you here?

4 A You know, I don't recall specifically, but I'm sure.

04:00:10 5 I'm sure I probably had brought that up at -- at some time.

6 Q Okay. And how about Preslie?

7 A I'm sure the same.

8 Q You said you got involved in the Autism Society. What  
9 is that?

04:00:23 10 A Well, organizations where, you know, parents of  
11 children with autism congregate and kind of share stories  
12 and things that work for them and their family.

13 Q So in '94, '95, with all of these things going on, did  
14 you feel that there was any impact on the marriage occurring  
04:00:49 15 or the family, if you want to think of it in the larger  
16 sense?

17 A There seemed to be a drastic impact on the family; in  
18 particular, Kendall and my husband.

19 Q Okay. And what was -- what is it you were seeing about  
04:01:01 20 your husband that makes you think there was an impact?

21 A Well, I believed at the time that, you know, he just  
22 must have been under a great deal of strain, because he was  
23 working so much. Also, I noticed behaviors manifesting  
24 where he was coming home less and less. Excuse me. He  
04:01:19 25 was -- he was becoming very, very short with me, which he

04:01:25 1 hadn't been in the past. He really didn't seem to want to  
2 participate in the family, where he had in the past. So  
3 kind of secretive, I noticed.

4 Q Okay. Did you end up filing for divorce from Cary  
04:01:43 5 Hardwick?

6 A I did.

7 Q When?

8 A I believe sometime in '95 or '96.

9 Q Okay. Was your filing for divorce related at all to  
04:01:56 10 anything to do with alcohol or substance abuse?

11 A It most definitely was.

12 Q So when is the first time you were concerned? Other  
13 than the signs that you were talking about before, was there  
14 something that told you that the problem is severe enough I  
04:02:12 15 need to seek an divorce? Some event?

16 A Well, the event is would be that my husband finally  
17 admitted that he had been having an affair but that he had  
18 since ended it. And he said that he had developed an  
19 addiction to alcohol.

04:02:31 20 Q Did he say anything at that time about drugs?

21 A He did not. Not at that time.

22 Q Did you find out later that there was a problem with  
23 drugs?

24 A I did. I found out that -- that his -- his addiction  
04:02:42 25 included drugs.



04:02:44 1 Q And do you know which drugs?

2 A My knowledge -- he told me that it was cocaine and then  
3 it went into crystal meth.

4 Q Did you ever see him with the children at any time  
04:02:59 5 where you suspected he was under the influence of either of  
6 those stimulants?

7 A Oh, there came a time where I did, yes.

8 Q But that wasn't initially like right when you were --  
9 *(Court Reporter requests clarification for the*  
04:03:08 10 *record.)*

11 THE COURT: Repeat your question, please.

12 BY MR. POWELL:

13 Q But did you see him at a time when you were filing --  
14 you know, starting your divorce proceedings where you  
04:03:21 15 thought, yeah, he's under the influence of some stimulant,  
16 like cocaine or crystal meth?

17 A That subsequently was why I filed for divorce.

18 Q Did -- when you first found out that your husband had a  
19 drug and alcohol problem, when you first found that out, did  
04:03:43 20 you learn anything about any other addictions at that time?

21 A Not at that time.

22 Q Okay. After you filed for divorce, did you learn about  
23 any other addictions that he had?

24 A Well, again, I did find out about a third addiction.

04:03:59 25 And that's what led me to also ultimately file for divorce

04:04:04 1 on the heels of him relapsing; but, yes.

2 Q What was that addiction?

3 A It was sex addiction.

4 Q You said something about a relapse. Let me take you  
04:04:18 5 back.

6 Is it true that Mr. Hardwick went into a rehab at  
7 some point when it first became knowledge to you at least  
8 that he was having an alcohol and substance abuse problem?

9 A That's correct, yes. When we talked about it.

04:04:31 10 Q I'm going to cut you off. Did you support that?

11 A Absolutely. We -- you know, listen. My heart broke  
12 for me. I'm a product of alcohol. My father was an  
13 alcoholic, so we both agreed that rehab would be a way to  
14 go, and let's keep this marriage together.

04:04:50 15 Q So was it a rehab where you go and you stay there?

16 A Yes.

17 Q And did you take the kids to visit him while you were  
18 in the rehab?

19 A Absolutely, yes.

04:04:59 20 Q So when he finished the rehab, what's the next -- was  
21 there any other time after that where you found he was  
22 either in possession or under the influence of drugs?

23 A Yes.

24 Q When was that? And I mean the next time. The very  
04:05:15 25 first time after the rehab.

04:05:17 1 A Okay. The first time after rehab, you're asking me the  
2 time frame?

3 Q Yeah. I don't expect you to give me the date, ma'am.

4 A That would be sometime in probably '95, '96.

04:05:36 5 Q And do you know what that was? How did you find him to  
6 be under the influence or in possession of other drugs?

7 A Well, there was some critical behaviors that were being  
8 exhibited, and it had become quite chaotic in our lives.

9 And there was one time when he had -- he was becoming  
04:05:59 10 psychotic. And he had followed my breathing. I was in bed

11 sleeping, and he had followed my breathing up the stairs  
12 with a knife, and he kind of came to me over with a knife.

13 That was a wake-up call for me.

14 There were other behaviors where he was -- he had  
04:06:19 15 put a hit out on the attorney for the estate of the -- of my  
16 father-in-law's estate. Gosh, I --

17 Q So is it true that he went to a rehab and then he did  
18 return to the home, or did he never again return to the  
19 home?

04:06:36 20 A Well, the intention was to return to the home, but he  
21 left the rehab early. And it was there that I found out  
22 about the sex addiction.

23 Q Okay. How would visitation work after he'd come out of  
24 the rehab and you two had definitely separated, and it was  
04:06:56 25 over in terms of a marriage?

04:06:58 1 A Well, visitation worked well until this secondary  
2 relapse happened.

3 Q Okay. Which one is that? The secondary?

4 A The one we just spoke of.

04:07:08 5 Q Is that part of the 730 evaluation?

6 A It's a relapse that occurred after rehab. And I think  
7 that is what compelled the 730 evaluation.

8 MR. WATKINS: Your Honor, I'm going to move to  
9 strike the last comment. Lack of foundation.

04:07:24 10 Nonresponsive.

11 THE COURT: Sustained.

12 MR. POWELL: Is that just the part about she  
13 thinks that's what compelled it?

14 THE COURT: Yes.

04:07:32 15 MR. POWELL: Okay.

16 BY MR. POWELL:

17 Q Let's talk about that: In the divorce proceedings, was  
18 there 730 evaluations conducted?

19 A There were.

04:07:42 20 Q Do you know who did the first one?

21 A I believe it was Dr. Howell.

22 Q Was there any testing for drugs of your ex-husband at  
23 that time when you were going through that 730 evaluation?

24 A There was. After a long confrontation, there was.

04:07:55 25 Q And what does that mean, "long confrontation"?

04:07:59 1 A He denied that he was using.

2 Q At the time that the 730 evaluation, the first one with

3 Dr. Howell was going on, was there supervised visitation or

4 often referred to in here, monitored visitation going on for

04:08:12 5 dad as well?

6 A I don't believe at that time.

7 Q Okay. You indicated he tested dirty during the first

8 730 eval.

9 Was there then monitored visitation?

04:08:22 10 A I don't believe there was monitored visitation then.

11 Q Okay. Do you remember any monitored visitation at all

12 during the divorce proceedings before, let's say,

13 November of 1999 when CPS became involved?

14 A No.

04:08:36 15 Q So what kind of visitation was dad --

16 *(Court Reporter requests clarification for the*

17 *record.)*

18 MR. POWELL: Did I go too fast?

19 THE COURT: Apparently. So what kind of

04:08:45 20 visitation was dad having at that time --

21 BY MR. POWELL:

22 Q -- with the children?

23 A Shall I go ahead?

24 Q I think so.

04:08:58 25 A Very liberal visitation. It was always my intention

04:09:02 1 and his as well -- we both agreed we wanted the children to  
2 have equal access to both of us, so it was liberal. But it  
3 started to get a little complex, because I had to be mindful  
4 of possible safety issues.

04:09:16 5 Q Did you learn that he had driven with the children in  
6 the car while under the influence of drugs or alcohol at any  
7 time during the divorce proceeding --

8 MR. WATKINS: Leading.

9 BY MR. POWELL:

04:09:26 10 Q -- and before CPS became involved in November of 1999?

11 A I did.

12 THE COURT: When there's an objection, you have to  
13 wait for my ruling.

14 THE WITNESS: I apologize.

04:09:36 15 THE COURT: Overruled.

16 So the answer stands, ladies and gentlemen.

17 THE WITNESS: I apologize.

18 BY MR. POWELL:

19 Q Now, again, before CPS became involved -- and let me  
04:09:48 20 make clear from your mouth, because what I say isn't  
21 evidence -- that was in November of 1999, correct?

22 A I apologize. I've lost my train of thought now. That  
23 being what?

24 Q When did CPS --

04:10:01 25 Okay. Let's just start with this: When did CPS

04:10:04 1 first ever become involved in your life?

2 A Late November 1999.

3 Q What about 1996? Do you have any involvement with CPS  
4 in the 1996 time frame?

04:10:17 5 A There was.

6 Q Okay. What happened in 1996 that led to CPS  
7 involvement after that time?

8 A In '96, the children were exhibiting some behaviors  
9 that caused concern. And I took Kendall, in particular, to  
04:10:46 10 her pediatrician and explained to him my, you know, complex  
11 set of circumstances. And he gave her a look/see and said  
12 that because of the issues, he had to make the call to CPS.

13 Q Now, "because of the issues." What issues were you  
14 discussing?

04:11:10 15 A I shared with him what was going on in our marriage.

16 Q And so he had to make a call to CPS, and he did?

17 A I don't recall if he was the one that called or I did.  
18 I do recall him giving me the option. And I believe I  
19 said -- he said, *Do you want me to call, or do you want to*  
04:11:30 20 *call?*

21 MR. WATKINS: Hearsay.

22 MR. POWELL: Effect on the hearer, Your Honor.

23 THE COURT: Overruled.

24 BY MR. POWELL:

04:11:42 25 Q Then, as I understand it, there was a second time --

04:11:50 1 strike that.

2 In your own words, what was the end result of  
3 whatever investigation CPS did that time?

4 A Thankfully, unsubstantiated.

04:12:00 5 Q Which, if I'm understanding correctly, means they  
6 didn't find any proof that that occurred?

7 A They didn't believe that any harm had occurred,  
8 correct.

9 Q Now, in the 1996 time frame, you had seen these  
04:12:19 10 behaviors, or -- let me ask you that: Did you see these  
11 behaviors that you thought were concerning, or did someone  
12 else see them?

13 A Generally, it was others that saw, but I also -- I had  
14 witnessed one particular instance and then, obviously, the  
04:12:41 15 secondary instance where a conversation took place.

16 Q All right. Now, was there a point in time where  
17 Mr. Hardwick -- it became known to you that Mr. Hardwick was  
18 intending to get married?

19 A Sure.

04:12:59 20 Q And who was he going to marry?

21 A Joy Whitney at the time. She's now Hardwick.

22 Q Did you know if they had a prior relationship?

23 A They did.

24 Q And what was that?

04:13:12 25 A Well, the individual that -- when my husband shared



04:13:15 1 that he had been having an affair, that was Joy Whitney.

2 Q Ms. Hardwick -- Ms. Fogarty, did anything about the  
3 manner in which your husband treated your relationship in  
4 terms of relations with other people ever affect how you  
04:13:41 5 treated him vis-à-vis the children?

6 A I certainly tried not to let it affect me. I stayed  
7 focused on what the children needed, and I think he tried to  
8 do the same.

9 Q Let me ask you about that: Him trying to do the same.  
04:13:56 10 When you were in the Howell evaluation period, did you  
11 perceive you and Mr. Hardwick as working together or against  
12 each other?

13 A Clearly, there was a conflict. He didn't like me  
14 holding him accountable. He was ashamed of his current  
04:14:14 15 state, so there were conflicts because I kept pressing  
16 because I felt the duty to make sure our kids were safe.

17 Q Okay. Do you mean safe from sexual abuse? Or do you  
18 mean safe from alcohol and substance abuse?

19 A All of the above. There were three addictions that  
04:14:32 20 were concerning. And, you know, the sexual addiction  
21 coupled with crystal meth, I didn't know.

22 Q Would you say there have been times where you did  
23 believe he had sexually abused Kendall?

24 A I think there were times when I was led to believe it  
04:14:52 25 was possible.

04:15:04 1 Q Forgive me, ma'am. Was there a time where -- where the  
2 visits started to change in terms of at least Kendall's  
3 willingness to participate in the visits with father in the  
4 time frame between '96 and '99?

04:15:27 5 A Between '96 and '99? Well, Kendall seemed to  
6 consistently -- she seemed to be the one that most  
7 challenged visitation from time to time; not always, but  
8 from time to time.

9 Q How about Preslie? She's right here. Did Preslie --  
04:15:45 10 did she have difficulties with visitations with dad at any  
11 time during 1996, 1999?

12 A I think that there may have been times that she might  
13 have exhibited a little anger for the most part. Preslie  
14 was very consistent and she seemed to enjoy her father as  
04:16:08 15 much as she did me. I do think she had an older sister that  
16 she was looking up to and seeing all this behavior, and I  
17 think it impacted Preslie from time to time. But for the  
18 most part, Preslie was very cordial, consistent.

19 Q Now, when was the first time you ever took either of  
04:16:28 20 the children to a therapist or psychologist for counseling?

21 A It was -- I'm not certain of the time frame. I'm -- I  
22 recall where it was, and -- but I don't recall the time.

23 Q Let me ask you this: What was the name of the first  
24 psychologist or therapist?

04:16:54 25 A Dr. Mitchell.

04:16:54 1 Q Okay. That's Marjorie Mitchell, correct?

2 A Correct.

3 Q Do you know if that was in, at least, 1999 time frame?

4 A I was going to guess, and I know we're not supposed to  
04:17:06 5 guess, so...

6 Q What were the reasons -- at that time when you're  
7 taking the children to Dr. Mitchell, what were the reasons  
8 why you were taking the children to Dr. Mitchell?

9 A Early on, it was for divorce transitional issues. Dad  
04:17:23 10 was remarrying and had a significant other in his life up to  
11 before he was married. We had to co-parent between '95 and  
12 '99 when he got married, so there was a lot of time in  
13 between there. The children --

14 You know, we were just seeking guidance from  
04:17:39 15 Dr. Mitchell to kind of help through some of those,  
16 you know, challenging issues.

17 Q Was there a time where the children -- strike that.

18 Did you ever attend a soccer game where there was  
19 some kind of conflict between yourself and Mr. Hardwick  
04:17:57 20 and/or his fiancée, Ms. Joy Whitney?

21 A I would say it was less with him and it was more with  
22 Ms. Whitney's mother.

23 Q Okay. In as succinct fashion as you can, please tell  
24 us what was the conflict about.

04:18:18 25 A It was over my concern for Kendall. She had a high

04:18:22 1 sensitivity to dad bringing around the other family. She  
2 wanted just her dad and just me at her games, as she was  
3 accustomed to. She made that very clear in therapy. Dad  
4 agreed with her and said he wouldn't do that. And the

04:18:40 5 following day he came with the entire family. And I saw  
6 Kendall's body language. She was on the field at that time,  
7 and I thought, Oh, gosh. We're going to have a meltdown.

8 Q That was what any conflict that day was about?

9 A Absolutely, right.

04:19:05 10 Q Now, was Dr. Mitchell, in your opinion, successful in  
11 working with the children on the transition into this  
12 blended family?

13 A I think it's no -- it's nothing against Dr. Mitchell.  
14 I think she did her best, but I think just -- Kendall's  
04:19:27 15 sensitivities are complex.

16 Q When you were with Dr. Mitchell, was that still a time  
17 where dad was having second, third and fifth weekends?

18 A I believe so.

19 Q And how long did -- that first time period spent with  
04:19:44 20 Dr. Mitchell, how long did that go on for? A month? Two  
21 months? A year? Ballpark.

22 A Six months.

23 Q So that would have taken you to November of 1999?

24 A Right.

04:19:58 25 Q Okay. Did anything happen in conversations with

04:20:06 1 Kendall in November of 1999 where you were concerned about  
2 inappropriate conduct?

04:20:21 3 A She and I had a conversation. She had been with dad  
4 over the weekend, and I think it was a weekend at home with  
5 me. And she popped out of bed and jumped in bed with me and  
6 was just chattering. And in that chatter -- I don't believe  
7 she intended to. I don't think she had a motive or even  
8 understood what she said, but she said that she had been  
9 touched down there.

04:20:37 10 And I said, *Who touched you?*

11 And she said, *Dad.*

12 And so that concerned me. I think it called for,  
13 you know, a neutral prospective and somebody who was trained  
14 to try to determine if that was just something very innocent  
04:20:54 15 or if there was some meaning behind that.

16 Q So is that the full extent of her description of  
17 inappropriate conduct was just something about being touched  
18 down there by daddy?

19 A Absolutely.

04:21:08 20 Q Hang on. By that I mean, nothing more graphic?  
21 Descriptive?

22 A Nothing more graphic, or descriptive. She wasn't  
23 trying to say that her dad was molesting her.

24 Q All right. And you said you wanted to take her to  
04:21:22 25 someone more neutral?

04:21:24 1 A Well, in our 730 evaluation with Dr. Howell, he had  
2 suggested because of the sexual addiction component, he  
3 said, *I don't believe that your husband is a pedophile; but*  
4 *if you ever see any sign that something inappropriate has*  
04:21:41 5 *happened with your daughters, this is the person you take*  
6 *them to. And that's Dr. Mitchell.*

7 Q Oh, is that how you -- is that part of how you ended up  
8 coming to her in June of 1999?

9 A It may well be her that her name was given to us  
04:21:57 10 anyhow, and we were there for help in divorce. I don't  
11 recall. But I do know, specifically, Dr. Howell was the one  
12 that recommended Dr. Mitchell.

13 Q So you took the child to Dr. Mitchell, correct?

14 A I did, uh-huh.

04:22:14 15 Q Are you aware whether Kendall disclosed some type of  
16 sexual abuse beyond being touched down there?

17 A I wasn't at the time. I just know that she interviewed  
18 with Dr. Mitchell.

19 Q Did Dr. Mitchell come out and give you a blow by blow  
04:22:30 20 of everything the child had said?

21 A Dr. Mitchell did not give me specifics, but when she  
22 out, she did tell me that she interviewed Kendall thoroughly  
23 and that she believed that there was enough signs to suggest  
24 abuse, and she believed that Kendall was extremely  
04:22:45 25 consistent. And because she was a mandated reporter, she

04:22:48 1 was going to have to call social services.

2 Q Is anything about that visit to Dr. Mitchell in  
3 November of 1999 have anything at all to do with court  
4 proceedings and/or gaining an advantage in court  
04:23:04 5 proceedings?

6 A I don't see where it would gain an advantage in any  
7 way, shape, or form.

8 MR. WATKINS: Objection. Nonresponsive.

9 THE COURT: Overruled.

04:23:16 10 MR. POWELL: Looking for --

11 BY MR. POWELL:

12 Q So after this report was made or after Dr. Mitchell  
13 indicated the need to make a report --

14 A Uh-huh.

04:23:29 15 Q -- did you become involved with Child Protective  
16 Services?

17 A The family did, yes.

18 Q How did that start? An interview? Did they come out  
19 to your house? Go to the kids' school? How?

04:23:42 20 A Social worker, I believe, came to our home and  
21 proceeded with an initial interview and gave me directions  
22 that from that point forward that dad was to be monitored  
23 and I was to make sure that Kendall was not exposed to dad,  
24 but by, I guess, social services directive.

04:24:09 25 Q Okay. So did father continue to have visits after this

04:24:15 1 first investigation by CPS in 1999?

2 A I'm sure -- it was shocking for him, but I'm sure there  
3 was a time when he didn't initially but eventually, yes.

4 Q Okay. Well, you would have had to take him for the --  
04:24:30 5 take the children for the visits, would you not?

6 A Ultimately, I was.

7 Q I realize it's some time ago. Is it fair to say that  
8 visits that were set up by CPS with the father, you would do  
9 your part and deliver the children?

04:24:44 10 A I was required to. And of course I would.

11 Q And by the way, Ms. Reales -- am I pronouncing that  
12 correctly?

13 A "Re-al-lis."

14 Q Did she have a driver's license in which she'd drive  
04:24:55 15 people as well?

16 A She did.

17 Q Who was mostly responsible for transporting those kids  
18 for visits?

19 A I was.

04:25:04 20 Q Is there ever a time in your life where you attempted  
21 to thwart father's visits with his children?

22 A Never.

23 Q Now, after the visit by CPS in November of 1999, at any  
24 point within the next 30 days or so, did Mr. Hardwick go to  
04:25:28 25 court seeking to get custody of the children?



04:25:30 1 A It came to my attention that he did.

2 Q Okay. Well, it came to your attention. If he goes to

3 court, didn't you have to go to court?

4 A You know, I don't recall that particular hearing. I

04:25:42 5 just know from the record that he made a request for

6 custody.

7 Q Okay. And did you end up having a second 730

8 evaluation as part of the family law divorce proceeding?

9 A I believe that was sometime after the second relapse.

04:26:02 10 Q Okay. Hang on. I might have missed a relapse. You

11 told me about one relapse. What do you mean by a "second

12 relapse"?

13 A Well, he was using then and then he relapsed, so I

14 apologize. It's semantics. It's the same relapse.

04:26:21 15 Q Are you aware of any relapses since that last one?

16 A I don't believe so, no. Huh-uh.

17 Q Does that make you happy?

18 A Absolutely. Oh, yeah.

19 Q Are you aware of the relationship that Preslie enjoys

04:26:39 20 with her father?

21 A Very much so.

22 Q Do you endorse it?

23 A Completely.

24 Q Do you know where Preslie lives right now?

04:26:47 25 A I do.

04:26:47 1 Q It's a loaded question. Where does she live?

2 A She lives with me.

3 Q How long has she been living with you?

4 A Probably going on three years now. What? 2013 maybe?

04:27:04 5 Q Kendall, your daughter --

6 A Maybe 2014. She was away at college part of the time.

7 Q Kendall, your daughter, she filed a lawsuit against the

8 County of Orange and these same defendants, didn't she?

9 A She did.

04:27:19 10 Q Did she live in your house at that time?

11 A Yes, she did.

12 Q How long had she been living in your house before she

13 ever filed any kind of lawsuit against the County of Orange?

14 A Well, she began living with me as soon as she graduated

04:27:35 15 from high school.

16 Q Can you give us that year?

17 A She graduated in 2009.

18 Q Okay.

19 A She was about 18, 19 years old then.

04:27:47 20 Q Let me ask you, ma'am: Do you mean that, like, she had

21 lived with dad prior to that and then graduates high school

22 and then comes lives with you? Is that what you mean?

23 A Correct.

24 Q And is that just in terms of primary residence in both

04:28:01 25 cases? In both cases, she would still visit with both of

04:28:05 1 you, right?

2 A She visited with both of us, correct.

3 Q But when she files a lawsuit, do you know what year she

4 did that?

04:28:16 5 A I'm afraid I don't offhand.

6 Q Do you know how long she lived in your house after she

7 filed the lawsuit? You know, a year? Six months?

8 A I want to say maybe three years. Four years.

9 Q Let me ask you about some things: Did you ever tell

04:28:40 10 Kendall to lie about being abused by Mr. Hardwick?

11 A No.

12 Q Did you ever pressure Kendall to go see a medical

13 doctor who would help implant memories into her head?

14 A No.

04:28:59 15 Q Are you aware of any allegations by her of that nature?

16 A Not in detail, but I've heard.

17 Q And do you understand she dropped the lawsuit, correct?

18 A She did.

19 Q Was that after she moved in with Mr. Hardwick?

04:29:18 20 A It -- I don't know if she was living with him at the

21 time; but, yeah, she was no longer living with me. She

22 left -- she left my residence and --

23 Q Where was she --

24 A I believe she left with him.

04:29:33 25 Q Would you know where she was living after she left your

04:29:36 1 residence?

2 A That I don't know. I believe she was living with him  
3 and then she ended up getting an apartment.

4 THE COURT: All right. It's 4:30, so we're going  
04:29:44 5 to recess for today. We'll resume tomorrow. We'll begin at  
6 9:00 a.m., so if you could do the same thing you did today,  
7 which is arrived a little bit early, maybe 10 minutes early,  
8 we'll get you all back into the jury room. Keep in mind  
9 there's always traffic and there's parking and getting  
04:30:03 10 through security and all of that.

11 Also, do not discuss this case with each other or  
12 anyone else, any family or friends. Don't do any research  
13 or communicate about it. And we will see you tomorrow at  
14 9:00 a.m.

04:30:21 15 If you could go ahead and take the jury back, I'm  
16 going to stay on the bench for a minute.

17 *(Jury out.)*

18 *(The following proceedings were had outside the*  
19 *presence of the jury:)*

04:30:48 20 THE COURT: Usually we're in recess. It's  
21 difficult when I stay on the bench. I make everything -- I  
22 confuse everything by that.

23 If you could step down, please. And you're just  
24 excused for today. So you can step outside, and I have some  
04:31:02 25 issues to address with the attorneys.

04:31:05 1 THE WITNESS: Thank you.

2 THE COURT: Thank you.

3 (Pause.)

4 THE COURT: All right. Just briefly. I know that  
04:31:35 5 you have -- we have allotted eight days for the case. I  
6 have heard the opening statements, and I've heard the  
7 beginning of the first witness. I'm going to go back to the  
8 final pretrial conference order and just point something  
9 out. There are two claims in the case, and the elements of  
04:31:56 10 each claim is really, essentially, the same: It's whether  
11 the defendants were acting under color of state law, and I  
12 believe that's been stipulated to.

13 MR. POWELL: We have that one stipulation.

14 THE COURT: We have one stipulation, so we don't  
04:32:15 15 know any further evidence on that.

16 So that leaves, really, two issues: Whether the  
17 defendants made or participated in making misrepresentations  
18 or omissions that were deliberate or demonstrated a reckless  
19 disregard for the truth relating to the orders that were  
04:32:40 20 issued and whether but for that dishonesty -- those  
21 misrepresentations or omissions -- the plaintiff would not  
22 have been removed.

23 That --

24 MR. POWELL: Or stayed.

04:32:56 25 THE COURT: Or would have stayed, correct.

04:32:58 1 All right. So those are -- but the key issue is,  
2 but for that dishonesty, the Court which issued the order  
3 would not have issued the order. So the only thing in that  
4 regard that is relevant is what was in front of the Court,  
04:33:17 5 what was in front of the judge, what did the judge have as  
6 that information in front of -- I usually say him or her,  
7 but here we know it's him -- and did these  
8 misrepresentations or omissions, to the extent that they are  
9 proven and deliberate and/or made with reckless disregard,  
04:33:37 10 did they cause that order to be issued.

11 All right. That is relatively narrow. I will  
12 tell you right now that based on what I've heard in the  
13 openings and what I'm hearing on the stand, you're going so  
14 far beyond what is at issue in this case that I'm  
04:33:57 15 second-guessing whether to give you eight days. Do not even  
16 think about asking for more than that. But you don't need  
17 eight days. I'm going to start sustaining some relevance  
18 objections. And if there aren't relevance objections, I'm  
19 going to start making *them sua sponte*. Because I'm not  
04:34:17 20 going to have the jury listen to days upon days of material  
21 and then get three little questions at the end that will  
22 have nothing to do with what you've spent all of their time  
23 telling them about, okay?

24 It's very straightforward. It's what were the  
04:34:35 25 misrepresentations or omissions? How do we know what was in

04:34:39 1 the defendant's head that can be circumstantial? In other  
2 words, why did they -- how can you show that they made these  
3 falsehoods deliberately or with reckless disregard for the  
4 truth? And then why is it on one side that you would argue  
04:34:59 5 that would have happened anyway on the other side? No, this  
6 was the key material that was in front of the judge at the  
7 time. So things that weren't in front of the judge aren't  
8 relevant. So most of what was just put in front of the jury  
9 is not relevant.

04:35:18 10 So, again, I'm going to give you the time you need  
11 to try the case but no more. If it continues on like this,  
12 you can expect to be ratcheted back. So I would suggest  
13 that you go very carefully back tonight and think, what  
14 witnesses do I need to prove these elements or to refute  
04:35:40 15 these elements to put on a defense, and I better put those  
16 witnesses on first. Because if you get far enough into this  
17 and you don't have time, you're not getting more.

18 Okay. I'm just telling you that, because that's  
19 the scope of the case. You gave it to me. I agreed with  
04:35:58 20 it. That's what your witnesses need to be focused on.  
21 That's what your documentary evidence needs to be focused  
22 on.

23 MR. POWELL: I'll do better myself, Your Honor.  
24 Thank you.

04:36:06 25 THE COURT: Thank you.

04:36:06 1 Tomorrow morning, if you have any issues that need  
2 to be addressed before the jury comes in, make sure you're  
3 here early. I will be.

4 And have a nice evening.

04:36:16 5 MR. POWELL: I will be discussing with Mr. Watkins  
6 the videos issue, because I think it kind of goes to what  
7 you were just talking about; and if so, we'll have an e-mail  
8 for you in the morning.

9 THE COURT: All right. And any video where you  
04:36:28 10 are making objections, I can't rule on them until I have  
11 what exactly you intend to put in front of me. So make sure  
12 that's in my hands so that I can rule on objections so that  
13 we can cut that out of any video. All right.

14 THE CLERK: All rise.

04:36:48 15 *(At 4:36 p.m., proceedings were adjourned.)*  
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CERTIFICATE

I hereby certify that pursuant to Section 753,  
Title 28, United States Code, the foregoing is a true and  
correct transcript of the stenographically reported  
proceedings held in the above-entitled matter and that the  
transcript page format is in conformance with the  
regulations of the Judicial Conference of the United States.

Date: January 18, 2018

/s/DEBORAH D. PARKER  
DEBORAH D. PARKER, OFFICIAL REPORTER

*DEBORAH D. PARKER, U.S. COURT REPORTER*